Transcripts
&
Records
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Supreme Court U.S. States
163 U.S.
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TRANSCRIPT OF RECORD.

UNITED STATES CIRCUIT COURT OF APPEALS.

EIGHTH CIRCUIT.

MAY TERM, 1895.

No. [illegible].

THE AETNA LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

NANCY L. FLORIDA, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED APRIL 1, 1895.

THE LAW ASSOCIATION
—OF—
PHILADELPHIA.

Transcripts
of
Record
1870

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Supreme Court of the State
163 U.S.
645-676

Book

Transcripts
of
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1895-

985

1635

673 - 676

UNITED STATES CIRCUIT COURT OF APPEALS.

EIGHTH CIRCUIT.

MAY TERM, 1895.

No. 624.

THE AETNA LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

NANCY L. FLORIDA, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED APRIL 1, 1895.

Caption to Transcript

Transcript from U. S. Circuit Court E. Dist.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit at the May Term, 1895, of said court, begun and held at the United States Court House in the City of St. Paul, Minnesota, on the first Monday, to-wit, the sixth day of May, A. D. 1895, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn and Honorable Amos M. Thayer, Circuit Judges:

Attest:

JOHN D. JORDAN,
Clerk of the U. S. Circuit Court of Appeals, Eighth Circuit.

Seal of the
United States
Circuit Court
of Appeals,
Eighth
Circuit

Be it remembered, that heretofore, to-wit, on the first day of April, A. D. 1895, a transcript of record in pursuance to a writ of error directed to the Circuit Court of the United States for the Eastern District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in the case of the Aetna Life Insurance Company Plaintiff in Error, vs. Nancy L. Florida, Defendant in Error, which said transcript of record, as printed by stipulation of the parties for the use of the court on the hearing of this case, is in the words and figures as following, to-wit:

a In the U. S. Circuit Court of Appeals.

May Term, 1895.

Aetna Life Insurance Co., P. E.,

vs.

Nancy L. Florida, D. E.

In the above entitled cause, the Clerk in printing the record will omit the two policies of insurance upon which suit was instituted, for the reason that the [the] Aetna Life Ins. Co. confessed in Court that they were in form and proofs of loss had been made, but sought to avoid payment on the grounds stated in the answer.

The Clerk will omit all the questions and answers in applications made by Florida to the Aetna Life Ins. Co., The Conn. Mutual Life Ins. Co. and Merchants Life Association, with the exception of the following questions and answers in each application to the above companies.

Questions.

1. Age of father—Age of Mother— and answers to these questions as stated in the applications to each of said companies.

2. The answers to the following questions in each of said applications—viz: The causes of the deaths of the father and mother.

This stipulation to be printed in the record.

St. Louis, Apr. 8/95.

FRANK M. ESTES,
For P. E.

L. R. WILFLEY,
& BOYLE & ADAMS,
For Defendant in Error.

Aetna Life Ins. Co., P. E., vs. Nancy L. Florida. Stipulation. Filed Apr. 16, 1895. John D. Jordan, Clerk.

1 United States of America—ss.

The President of the United States, To the Honorable the Judges of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri—Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, at the September Term, 1894, thereof, between Nancy L. Florida, Plaintiff and Aetna Life Insurance Company Defendant, a manifest error hath happened, to the great damage of the said defendant Aetna Life Insurance Company as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid, at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 6th day of April, 1895, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 5th day of February in the year of our Lord one thousand eight hundred and ninety-five. Issued at office in the City of St. Louis, with the seal of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, dated as aforesaid.

Seal of the United States Circuit Court, Eastern Division, of the Eastern Judicial District of Missouri.

T. L. CRAWFORD,

Clerk Circuit Court United States, Eastern Division of the Eastern Judicial District of Missouri.

By JAS. R. GRAY, Deputy.

Allowed by HENRY S. PRIEST, Judge.

2 RETURN TO WRIT.

United States of America,

Eastern Division of the Eastern Judicial District of Missouri—ss.

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals for

the Eighth Circuit, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name, and affix the seal of said Circuit Court, at office in the City of St. Louis this 30th day of March, A. D. 1895.

Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri.

T. L. CRAWFORD,
Clerk of said Court.

No. 3791. United States Circuit Court Eastern Division of the Eastern Judicial District of Missouri. Nancy L. Florida vs. Aetna Life Insurance Co. Writ of Error to the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. Filed 5th day of Feby. 1895. T. L. Crawford, Clerk.

3 The United States of America To Nancy L. Florida—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Paul, Minn., sixty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein the Aetna Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Henry S. Priest, Judge of the Circuit Court of the United States for the Eastern District of Missouri, this fifth day of February in the year of our Lord one thousand eight hundred and ninety-five.

HENRY S. PRIEST,
United States District Judge, for the Eastern District of Missouri.

St. Louis, Feb. 5, 1895.

I, Nancy L. Florida do hereby acknowledge service of within citation.

NANCY L. FLORIDA,
By BOYLE & ADAMS,
& L. R. WILFLY,
Her Attys.

No. 3791. United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. Florida vs. Aetna Life Ins. Co. Citation. Filed Feby. 5, 1895. T. L. Crawford, Clerk.

5 United States of America,
Eastern Division of the Eastern Judicial District of Missouri—ss.

In the Circuit Court of the United States In and for the Eastern Division of said District.

Be it Remembered, That on the second day of March, A. D., 1894, there was filed in the Clerk's office of said Court, a certain Petition, in words and figures following, to-wit:

PETITION.

United States of America,
Eastern Division of the Eastern Judicial District of Missouri—ss.

In the Circuit Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri.

March Term, 1894.

Nancy L. Florida, Plaintiff;
vs.
Aetna Life Insurance Company, Defendant.

Now comes Nancy L. Florida, plaintiff in the above entitled cause, and states that she is a resident of the City of St. Louis, and a citizen of the State of Missouri, and that defendant, the Aetna Life Insurance Company, is a corporation duly organized under the laws of the State of Connecticut, and is a citizen of said State of Connecticut; that said defendant is now, and was at the times hereinafter stated, doing business as a Life Insurance Company in the State of Missouri under and
6 in accordance with the provisions and regulations of the Statutes of the State of Missouri relating to foreign life insurance companies.

And for her first cause of action herein, plaintiff states that on the 30th day of July, A. D. 1891, and up to the 27th day of April, 1893, she was the wife of one Alonzo K. Florida, and during this time, resided with him in the State of Missouri; that on the said 30th day of July, A. D. 1891 the said defendant, by its certain contract, commonly called a policy of insurance, of that date, duly executed and delivered by it within said State to the said plaintiff, which is herewith filed and marked "Exhibit A," for the consideration of eighty-six dollars and eighty cents ($86.80) then paid to it and the undertaking to pay said sum of eighty-six dollars and eighty cents ($86.80) on the 30th day of July of each and every year during the continuance of said policy, did insure the life of the said Alonzo K. Florida for the period of ten years thereafter, and did thereby promise, within ninety days after satisfactory proof of the death of the said Alonzo K. Florida within said period, to pay to this plaintiff, the wife of the said Alonzo K. Florida, the sum of five thousand dollars ($5,000) in money; and while said policy was in full force, to-wit, on the 27th day of April, 1893, the said Alonzo K. Florida departed this life; that afterwards, to-wit, on the 18th day of July, 1893, satisfactory proof of the death of the said Alonzo K. Florida was given to the said defendant by this plaintiff; that during the lifetime of the said Alonzo K. Florida, he, the said Alonzo K. Florida and the said plaintiff duly paid said sums of money to the defendant annually as in said policy of insurance undertaken, as aforesaid and otherwise complied with and performed each and all of the conditions and provisions of said policy of insurance, re-
7 quired of them or either of them to be complied with or performed; that the said plaintiff heretofore and on the 19th day of October, 1893, demanded of the said defendant the payment of the said sum of five thousand dollars ($5,000) which the said defendant has hitherto failed to pay and now refuses to pay; wherefore plaintiff prays judgment against said defendant for said sum of five thousand dollars ($5,000) with interest thereon from the 19th day of October, A. D. 1893 at the rate of six per cent. per annum.

For her further and second cause of action herein, plaintiff states that on the 12th day of July, 1892, and up to the 27th day of April, 1893, she was the wife of one Alonzo K. Florida, and during this time resided with him in the State of Missouri; that on the said 12th day of July, A. D. 1892 the said defendant by its certain contract, commonly called a policy of insurance of that date, duly executed and delivered by it within said State to the said plaintiff which is herewith filed and marked "Exhibit B," for the consideration of three

hundred and fifty dollars and sixty cents ($350.60) then paid to it and the undertaking to pay said sum of three hundred and fifty dollars and sixty cents ($350.60) on the 12th day of July of each and every year during the continuance of said policy, did insure the life of the said Alonzo K. Florida for the period of twenty years thereafter, and did thereby promise, within ninety days after satisfactory proof of the death of the said Alonzo K. Florida within said period, to pay to this plaintiff, the wife of the said Alonzo K. Florida, the sum of ten thousand dollars ($10,000) in money; and while said policy was in full force to-wit, on the 27th day of April, 1893, the said Alonzo K. Florida departed this life; that afterwards, to-wit,
8 on the 18th day of July, 1893, satisfactory proof of the death the said Alonzo K. Florida was given to the said defendant by this plaintiff; that during the lifetime of the said Alonzo K. Florida, he, the said Alonzo K. Florida and the said plaintiff duly paid said sums of money to the defendant annually as in said policy of insurance undertaken, as aforesaid and otherwise complied with and performed each and all of the conditions and provisions of said policy of insurance, required of them or either of them to be complied with or performed; that the said plaintiff heretofore and on the 19th day of October, 1893, demanded of the said defendant the payment of the said sum of ten thousand dollars ($10,000) which the said defendant has hitherto failed to pay and now refuses to pay; wherefore plaintiff prays judgment against said defendant for said sum of ten thousand dollars ($10,000) with interest thereon from the 19th day of October A. D. 1893 at the rate of six per cent. per annum.

BOYLE & ADAMS,
L. R. WILFEY,
Attorneys for Plaintiff.

Upon the filing of said Petition there was issued out of the Clerk's office of said Court a summons which, with the Marshal's Return of service indorsed thereon, is in words and figures following, to-wit:

(SUMMONS).

United States of America,
Eastern Division of the Eastern Judicial District of Missouri—set.

9 In the Circuit Court of the United States in and for the Eastern Division of said District.

The President of the United States of America, To the Marshal of the United States in and for said District—Greeting:

You are hereby commanded to summon the Aetna Life In-

surance Company, a corporation and citizen of the State of Connecticut that it be and appear before the Honorable Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, on the first day of the next term thereof, to be holden at the City of St. Louis, in and for the Eastern Division of said District, on the third Monday of March 1894, then and there to answer the complaint of Nancy L. Florida, a citizen of the State of Missouri, as set forth in the petition filed in said Court on the second day of March, A. D. eighteen hundred and ninety-four.

Hereof fail not and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the second day of March, A. D. eighteen hundred and ninety-four. Issued at office, in the City of St. Louis, under the deal of said Circuit Court, the day and year last aforesaid.

[Seal] A. P. SELBY, Clerk.

10 (Marshal's Return.)

United States of America,
Eastern Division of the Eastern Judicial District of
Missouri—ss.

I certify that on the 2nd day of March, 1894, at the City of St. Louis in the Eastern Division of the Eastern Judicial District of Missouri, I delivered a certified copy of this writ together with a copy of the petition in this cause as furnished by the Clerk to James R. Waddell, Insurance Commissioner within and for the State of Missouri.

FRANK BUCHANAN, U. S. Marshal,
Eastern District of Missouri.
By W. W. NALL, Deputy.

And afterwards, to-wit: on the 21st day of March, A. D., 1894, the following among other proceedings were had and appear of record in said cause, to-wit:

(APPEARANCE OF DEFENDANT.)

Nancy L. Florida, Plaintiff,
3791. vs.
Aetna Life Insurance Company, Defendant.

Now comes defendant by attorney and enters appearance and on motion is given leave to answer on or before March 28th instant.

11 And afterwards, to-wit: on the 28th day of March, A. D., 1894, there was filed in said cause an Answer, in words and figures following, to-wit:

(ANSWER.)

In the Circuit Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri.

March Term, 1894.

Nancy L. Florida, Plaintiff,

vs.

Aetna Life Insurance Co., Defendant.

Comes now the defendant, Aetna Life Insurance Company, and for answer to the two counts contained in plaintiff's petition herein, admits that it is a corporation duly organized under the laws of the State of Connecticut, and was at the times hereinafter stated doing business as a Life Insurance Company in the State of Missouri, under and in accordance with the provisions and regulations of the statutes of the State of Missouri relating to foreign Life Insurance Companies.

The defendant admits, as stated in plaintiff's petition, that it issued to Alonzo K. Florida on the 30th day of July, 1891, and on the 12th day of July, 1892, its two certain life insurance policies for the sums of $5,000 and $10,000 respectively. And that said Florida paid the premiums due upon said policies during his lifetime, and that said Florida departed this life on the 27th day of April, 1893; and that proof of the death of said Florida was furnished to this defendant by this plaintiff.

Defendant further answering states that the plaintiff should not recover upon either of the policies issued to said
12 Florida on the dates as aforesaid, for the reason that in and by the terms of each of said policies it is provided, "This policy is issued and accepted subject to the following provisions:

Sec. 4. The answers, representations and declarations contained in and indorsed upon the application for this insurance are warranted to be true; and if this policy has been obtained by fraud, misrepresentation or concealment; or if the insured shall commit suicide, then this policy shall become null and void."

Defendant states that said policies were issued by the defendant in consideration of certan representations and warranties contained in his written applications to the defendant for the said policies dated on the 25th day of July, 1891, and on the 24th day of June, 1892.

That said Florida in making his first application to this company, in answer to a question as to what amounts are now insured upon his life, omitted to mention certain policies which

had theretofore been issued to him by different Insurance Companies. And in his second application, dated June 24th, 1892, he made the same misstatements with reference to the amount of insurance he had in various companies.

And in answer to the question "Have you had during the past seven years any disease or severe sickness," said Florida answered "No" when in fact he had suffered from a severe attack of La Grippe in the winter of 1891-2. And that said Florida in answer to questions as to his family history, misstated the facts in relation to the causes of the deaths of both of his parents. That the policy which was issued on the 30th day of July, 1891, was, by an oversight of said Florida, allowed to lapse. And that on the 30th day of September, 1892, he made an application for the revival of said policy, and in answer to questions as to his general conditions of health
13 he made false and fraudulent statements with reference thereto, and for the purpose of defrauding said company of the amount of said insurance.

That on the 27th day of April, 1893, and within two years from the date of said policies, said Florida committed suicide; and the defendant alleges the fact to be that said Florida, at the time that he made his said applications to the defendant for said policies, contemplated suicide.

That at the time of making said applications for said insurance, said Florida contemplated and intended to secure the said contracts of insurance from this defendant with the intention soon thereafter to take his own life.

That the said purpose and intention of said Florida was not known to the defendant, and was purposely concealed by him in order that he might secure said policies of insurance and thereafter, by taking his own life, enable his representatives to secure the benefits accruing under said policies.

That the said acts of said Florida were a fraud upon this defendant, and that by reason of said acts of said Florida, said policies of insurance became wholly void. And the defendant having fully answered, asks to go hence with its costs.

FRANK M. ESTES,
For Defendant.

And afterwards, to-wit: on the 30th day of March, A. D.,

1894, there was filed in said cause a Reply, in words and figures following, to-wit:

(REPLY.)

14 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Nancy L. Florida, Plaintiff,

vs.

Aetna Life Insurance Company, Defendant.

And now comes the said plaintiff and for her reply to the new matter set up in defendant's answer denies each and every allegation thereof.

By her Attorneys,

BOYLE & ADAMS,

&

L. R. WILFLEY.

And afterwards, to-wit: on the 31st day of March, A. D. 1894, the following further proceedings were had and appear of record in said cause, to-wit:

(ORDER GRANTING LEAVE TO AMEND PETITION &c).

Nancy L. Florida, Plaintiff,

3791 vs.

Aetna Life Insurance Company, Defendant.

Now come the parties by their attorneys and file the following stipulation:

"It is hereby stipulated that the plaintiff may amend her "petition by interlineation and erasure, as follows:

"Insert in line 13 of the first page after the words "Alonzo "K. Florida," the following words, namely; "and during this "time resided with him in the State of Missouri."

15 " and also

"Erase in line 16 of the first page after the words "duly executed" the following words, namely: "by it" and in-"sert in said line 16 of page first after the words "and deliv-"ered" the following words, namely: "by it within said State."

" and also

"Insert after the words "Alonzo K. Florida" in the first line "of page 3 of said petition the following words, namely: "and

"during this time resided with him in the State of Missouri"

" and also

"Erase in the 4th line of said page 3, after the words "duly "executed" the following words, namely: "by it" and insert "in said line 4 of page 3 after the word "delivered", the fol- "lowing words namely: " by it within said State"

" and also

"by adding at the beginning of said petition the venue as fol- "lows: United States of America, Eastern Division of the "Eastern Judicial District of Missouri.

" BOYLE & ADAMS,
" L. R. WILFLEY,
" Plaintiff's Attorneys.
" FRANK M. ESTES,
" Defendant's Attorney."

And thereupon said petition is, by leave of Court, amended in accordance with said stipulation; defendant refiles its answer to petition, said answer to stand as answer to petition as amended and plaintiff refiles its replication as replication to said answer to petition as amended.

16 And afterwards, to-wit: on the 1st day of October, A. D. 1894, the following further proceedings were had and appear of record in said cause, to-wit:

(LEAVE TO FILE AMENDED ANSWER DENIED).
&c.

Nancy L. Florida, Plaintiff,
3791 vs.
Aetna Life Insurance Company, Defendant.

Now come said parties by their respective attorneys, and defendant moves the Court for leave to file an amended answer herein which is denied. Defendant asks leave to pay into Court $524.20, being amount of premiums on policies which is granted, and defendant makes deposit of said sum with the Clerk of this Court; defendant thereupon files a motion and affidavit for a continuance which having been considered by the Court is overruled.

And on said 1st day of October, A. D. 1894, the following

further proceedings were had and appear of record in said cause, to-wit:

(Jury called; case heard in part).

Nancy L. Florida, Plaintiff,

3791 vs.

Aetna Life Insurance Company, Defendant.

Now come the parties by their respective attorneys, the plaintiff by Messrs Boyle and Adams and L. R. Wilfley and the defendant by Frank M. Estes, and this cause being regularly called for trial and both parties being ready, on motion, it is ordered that a jury come, and thereupon comes said jury, to-wit: Alexander Wright, Alexander Kessler,
17 H. M. Jones, James Hensil, W. M. Freeman, Henry Hill, Elam A. Sloan, Hugh Long, Francis A. Lane, James Owens, George Thomure and J. H. Plackemeyer, twelve good and lawful men duly empanelled and sworn to well and truly try the issues joined herein; and the hearing of this cause was proceeded with but not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to-wit: on the 2nd day of October, A. D. 1894, the following further proceedings were had and appear of record in said cause, to-wit:

(Case further heard).

Nancy L. Florida, Plaintiff,

3791. vs.

Aetna Life Insurance Company, Defendant.

Now, again come the parties hereto by their attorneys, the plaintiff by Boyle and Adams and L. R. Wilfley and the defendant by Frank M. Estes and also comes the jury herein as on yesterday, to-wit: Alexander Wright, Alex Kessler, H. M. Jones, James Hensil, W. M. Freeman, Henry Hill, Elam A. Sloan, Hugh Long, Francis A. Lane, James Owens, George Thomure, and J. H. Plackemeyer, the hearing of this cause was proceeded with and at the conclusion of the evidence, the argument of counsel was commenced but not being completed

at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

18 And afterwards, to-wit: on the 3rd day of October, A. D., 1894, the following further proceedings were had and appear of record in said cause, to-wit:

(JUDGMENT).

Nancy L. Florida, Plaintiff,
3791 vs.
Aetna Life Insurance Company, Defendant.

Now again come the parties hereto by their attorneys, the plaintiff by Boyle and Adams and L. R. Wilfley and the defendant by F. M. Estes, and also comes the jury herein as on yesterday, to-wit: Alexander Wright, Alex. Kessler, H. M. Jones, James Hensil, W. M. Freeman, Henry Hill, Elam A. Sloan, Hugh Long, Francis A. Lane, James Owens, George Thomure and J. H. Plackmeyer, who after hearing further argument of counsel and the charge of the Court, return the following verdict, to-wit: "We the jury find for plaintiff on the first count of her petition and assess her damages at the sum of five thousand two hundred and eighty-eight dollars and twenty-eight cents. And we find for plaintiff on the second count of her petition and assess her damages at the sum of ten thousand five hundred and seventy-six dollars and fifty-six cents.

(Signed) FRANCIS A. LANE, Foreman."

It is therefore considered by the Court that the plaintiff Nancy L. Florida have and recover of the defendant Aetna Life Insurance Company as well the sum of fifteen thousand eight hundred and sixty-four dollars and eighty-four cents, being the total damages aforesaid by the jury assessed as also the costs in this behalf expended and have thereof execution.

19 And afterwards, to-wit: on the 9th day of January, A. D., 1895, the following further proceedings were had and appear of record in said cause, to-wit:

(BILL OF EXCEPTIONS ALLOWED AND FILED.)

Nancy L. Florida, Plaintiff,
3791. vs.
Aetna Life Insurance Co., Defendant.

Now comes defendant by attorneys and tenders a Bill of Exceptions which is allowed, signed, sealed and filed and made a part of the record herein.

Said Bill of Exceptions is in words and figures following, to-wit:

(BILL OF EXCEPTIONS.)

In the Circuit Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri.

Nancy L. Florida, Plaintiff,

vs.

Aetna Life Insurance Company, Defendant.

Be it remembered, That on this first day of October, 1894, and at the September Term, 1894, of said Court the above entitled cause coming on for trial before Hon. H. S. Priest Judge of said Court, the following proceedings were had:—

Appearances:

E. B. Adams, Esq., and L. R. Wilfley, Esq., for Plaintiff.

Frank M. Estes, Esq., for Defendant.

20 By Mr. Estes: Before going into the trial of this case I would like the Court to grant leave to file an amended answer. I have already served a copy of the answer on counsel for plaintiff.

Judge Adams: We object to the filing of an amended answer at this late day as the case was set down for trial some ten days ago, and we do not think it justice that an amended answer should be filed on the very day of the tral.

The Court: I cannot permit you to file that answer now, Mr. Estes, over the objection of counsel for plaintiff.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Mr. Estes: I find on calling over the list of witnesses that have been summoned by our side that Mr. Harvey is not here. As he is a very important witness I do not feel that I can safely proceed to trial without his testimony.

The Court: Prepare your affidavit for a continuance and I will pass upon it.

Whereupon Mr. Estes, counsel for defendant, offered the following affidavit for continuance.

(AFFIDAVIT FOR CONTINUANCE.)

Nancy L. Florida

vs.

Aetna Life Ins. Co.

In support of the motion for a continuance, T. B. Merrill on oath states: That he is a resident of Hartford, Conn., and the representative of the Aetna Life Ins. Co., at this trial. That said Company cannot safely go to trial without the testimony of Aug. F. Harvey. That there is no other witness in attendance by whom he could prove the same facts as he expects to prove by said Harvey. That said Harvey is an officer
21 of the State of Missouri and is the Actuary of the State Insurance Dept. of Mo. That the office of said Insurance Dept. is only two squares or blocks away from the Custom House, where the U. S. Court rooms are located.

That affiant has been informed and believes, that said Harvey is very seldom absent from his office in the Ins. Dept., being a man of strong [physizue], robust health and very attentive to his duties. Affiant caused to—placed in the hands of the U. S. Marshal on the morning of September 28, 1894 a subpoena directed to said Harvey. That the Marshal called at his office and was informed that said Harvey had several days before this time left the city for New York and would not return before Oct. 20, '94. That there are a great number of witnesses in said cause, some of them non-residents and affiant has used all efforts to get the witnesses for the deft before the court and be ready for trial. That against the protest of the counsel for deft., as affiant has been informed, this court on Sept. 20th peremptorily set this cause down for trial on the first day of October.

That it would be almost impossible for an attorney with other business on his hands, to prepare this case for trial and look after the witnesses in addition to this other work.

This the deft is anxious to have the case tried and does not make this application for the mere purpose of delay. That said witness Harvey is not absent by the consent, connivance or procurement of affiant or of any one connected with the defendant company. That the issues involved are serious and the amount involved—quite large and this absent witness is one of the most important witnesses who will testify for the defendant. That his testimony is material and no other witness knows the same facts.

22 That if present said Harvey would testify if present as follows:

That some time in the fall of 1892, I think it must have been in October, a gentleman called at our office and inquired for

Mr. Harvey. He was shown into my room and made inquiries concerning the suicide clauses in the policies of the insurance companies of the country and also in regard to the assessment companies and whether the mortality in the assessment companies were increasing on account of suicides. I told him I thought the death rate had increased in the assessment companies on account of the numerous suicides and spoke to him of the experience of the Legion of Honor of this City. I told him that I thought the Mo. law regarding suicides was the cause of so many suicides in this State.

He wanted to know what regular companies did not object to pay for suicides. I mentioned three or four companies to him. After some further talk in the same direction, he thanked me for my information and left my office.

The day after A. K. Florida killed himself. I saw his picture in the papers and I recognized him as the man who several months before had called at my office and with whom I had the conversation as stated above.

Affiant states that the principal defense of deft. Co. is, the intention of Florida to commit suicide when he took out his policies and he regards the above testimony as very material.

That affiant asks for a continuance in order that deft may present its defense properly before the court and that justice may [—] done.

That deft would be perfectly willing to try said cause on Oct. 20 next, or as soon as Mr. Harvey returns to this City.

That said Harvey resides in this City and affiant will
23 have him present in Court when said cause is set for hearing again or have his deposition.

That this application is not made for vexation or delay but that justice may be done.

T. B. MERRILL.

Sworn to and subscribed before me this 1st day of October, 1894.

T. L. CRAWFORD, Clerk.

Judge Adams: We do not think the affidavit shows that due diligence has been used and further if that witness was here and would testify as the affidavit states he would testify we should certainly object to such testimony as being entirely immaterial to the issues of this case.

The Court: I think that due diligence has been shown and I cannot now pass on the materiality of the testimony that the witness might give if he were present.

Judge Adams: Rather than delay the trial we will admit that if Mr. Harvey were present he would testify substantially the matters and things set forth in the affidavit, but I want to reserve the right to object to the testimony as being immaterial.

The Court: You can formulate your objections when he comes to read that part of the testimony to the jury.

Plaintiff's counsel then and there excepted to the ruling of the court at the time.

Judge Adams then read plaintiff's petition in words and figures as follows, to-wit:

(See page 5.)

Mr. Estes then read defendant's answer as follows:

(See page 11.)

24 Judge Adams then read plaintiff's reply as follows:

(See page 13.)

Judge Adams: I now offer in evidence the policy of insurance marked Exhibit A which — filed at the time this suit was brought which was executed by the defendant company July 30th, 1891, which reads as fololws:

* * * * * * * * *

26 Judge Adams: I next offer the policy for $10,000. which bears date July 12th, 1892 whereby the Aetna Life Insurance Company promises to pay $10,000. to Mrs. Florida the plaintiff in this case.

* * * * * * * * *

28 Judge Adams: We will rest our case there.

Whereupon the defendant offered the following proofs and testimony:

Moses Hamer being called and sworn testified on the part of the defendant as follows:

Direct Examination

By Mr. Estes.

Q. State your full name?
A. Moses Hamer.

Q. Where do you live?
A. In Jersey County, Illinois.
Q. Did you know the late Alonzo K. Florida?
A. Yes, sir, he was my nephew.
Q. You knew his father and mother?
A. Yes, sir, his mother was my sister.
Q. Do you know where his mother died?
A. She died in Jersey County, Illinois.
Q. Do you know what her age was at the time of her death?

Judge Adams: I object to any testimony in regard to the age of the father or mother. There is no issue raised by the answer in this case that any misrepresentation as to the age of the father or mother contributed in any way to the death of the insured. Unless that issue is raised they cannot go into this line of testimony. If they are to base their defense on that sort of testimony they should have raised that issue in their answer.

Mr. Estes: We think it is very material as showing the whole conduct of the insured in securing these policies.

The Court: I will overrule the objection.

Plaintiff's counsel then and there excepted to the ruling of the Court at the time.

Q. How old was Mr. Florida's mother when she died?
A. I cannot recall the years but I know that she was 18 when she was married which was the latter part of 1853.
Q. Do you know when she died?
A. I think in 1859 or '60.

The Court: In 1859 or 1860?

A. Yes, sir, that is as near as I can get it.

29 Mr. Estes: To the best of your knowledge then she was born in 1835?

Judge Adams: He did not say that. He said she was married in 1853 and was eighteen years old at the time.

Mr. Estes: Then she must have been born in 1835.

Judge Adams: That is a question for the jury to determine.

Q. Do you know what caused her death?

Objected to as incompetent, immaterial and irrelevant.

Judge Adams: I want to object to these questions for there is no telling where they will lead to.

The Court: I will overrule the objection for the present.

Plaintiff's counsel then and there excepted to the ruling of the court at the time.

Judge Adams: I think if he is going into these matters now I think we ought to have these applications in evidence and get them before the court and jury; otherwise I do not see how I can cross-examine this witness.

Mr. Estes: I would prefer to introduce them my own way and do not think I should be forced to introduce them now.

The Court: I think if you are going to offer this testimony you had better offer the applications now.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Mr. Estes: Under the ruling of the court I will now offer in evidence the application made by Mr. Florida under which this insurance was procured, one dated July 25th, 1891, and one dated June 24th 1892 and an application for the revival of a policy issued July 12th, 1891, which application for revival is dated September 30th, 1892.

30 AETNA LIFE INSURANCE COMPANY,

of Hartford, Conn.

Executive Officers.—President; Vice-President; Secretary; Asst. Secretary.

Being desirous of insuring my life with the Aetna Life Insurance Company, I do hereby declare and warrant that I am now in good health, of sound body and mind, and that the following statements are full, correct, and true; and that I have no knowledge or information of any disease, infirmity, or circumstance, not stated in this application, which may render insurance on my life more hazardous than if such disease, infirmity, or circumstance had never existed; and I do hereby agree that the declarations and warranties herein made, and the answers to the following questions, shall be the basis and form part of the contract (or policy) between me and said Company, and that if the same be in any respect untrue, said Policy shall be void; and I further agree that the insurance hereby applied for shall not be binding upon said Company, until a policy has been issued, nor until the amount of premium as stated herein, has been received by said Company, or its authorized agent, during my lifetime and good health, and a receipt given therefor, signed by an Executive Officer of said Company; and I further agree that no statement or declaration made to any

agent, examiner, or any other person, and not contained in this application, shall be taken or considered as having been made to, or brought to the notice or knowledge of, said Company, or as charging it with any liability by reason thereof; and I understand that all policies and agreements made by the said Aetna Life Insurance Company are signed by one or more of its Executive Officers, and that no other person can grant insurance or make any agreement binding upon said Company.

Questions and answers above referred to.

* * * * * * * * * * * *

25. Are your Parents living?	*a.* Father.	Age.	State of His Health.	*b.* Mother.	Age.	State of Her Health.
26. Are your Parents dead?	*a.* Father. Yes.	Age at Death. 46	Cause of His Death. Gun shot in war—don't know particulars.	*b.* Mother. Yes.	Age at Death. 46	Cause of Her Death. Female trouble

* * * * * * * * * * * *

32 AETNA LIFE INSURANCE COMPANY,
of Hartford, Conn.

Executive Officers.—President; Vice-President; Secretary; Asst. Secretary.

Being desirous of insuring my life with the Aetna Life Insurance Company, I do hereby declare and warrant that I am now in good health, of sound body and mind, and that the following statements are full, correct, and true; and that I have no knowledge or information of any disease, infirmity, or circumstance, not stated in this application, which may render insurance on my life more hazardous than if such disease, infirmity, or circumstance had never existed; and I do hereby agree that the declarations and warranties herein made, and the answers to the following questions, shall be the basis and form part of the contract (or policy) between me and said Company, and that if the same be in any respect untrue, said Policy shall be void; and I further agree that the insurance hereby applied for shall not be binding upon said Company, until a policy has been issued, nor until the amount of premium as stated herein, has been received by said Company, or its authorized agent, during my lifetime and good health, and a receipt given therefor, signed by an Executive Officer of said Company; and I further agree that no statement or declaration made to any agent, examiner, or any other person, and not contained in this application, shall be taken or considered as having been made to, or brought to the notice or knowledge of, said Company, or as charging it with any liability by reason thereof; and I un-

derstand that all policies and agreements made by the said Aetna Life Insurance Company are signed by one or more of its Executive Officers, and that no other person can grant insurance or make any agreement binding upon said Company.

Questions and answers above referred to.

* * * * * * * * * * * *

26. Are your Parents Dead?	*a.* Father.	Age at Death.	Cause of His Death.	*b.* Mother.	Age at Death.	Cause of Her Death.
	Yes.	46	Gun shot in war.	Yes.	46	Female trouble

* * * * * * * * * * * *

33 (Application of A. K. Florida for Revival of Policy, Dated September 30, 1892).

* * * * * * * * * * * *

Sep. 30, 1892.

For the purpose of obtaining the revival of Policy No. 196,-427, issued by the Aetna Life Insurance Co., on the life of A. K. Florida which Policy lapsed because of the non-payment of premium due on the 30th day of July, 1892, I hereby represent that the said A. K. Florida is now in good health, and that there is nothing in his habits or condition which is likely to impair his health or shorten his life. And if this representation shall prove in any respects untrue, said Policy shall cease and be treated in the same manner as if it had not been revived. I also agree that by accepting this premium now, the said Company incurs no obligation to accept any future premium after it becomes due.

(Signed) A. K. FLORIDA.

Witness,
W. R. STELLE, Mg'r.

This Representation should be signed by the beneficiaries under the Policy, or by the person who pays the premium, as their agent.

34 Q. What was the cause of his mother's death?
A. She died of tumor of the womb.
Q. Do you know the age of Mr. Florida's father at the time of his death?

Judge Adams: I make the same objection to that that I did to any testimony in regard to the death of the mother.

Objection overruled.

Plaintiff's counsel then and there excepted to the ruling of the Court at the time.

Q. How old was he at the time of his death?
A. I do not know except to say that he was five or six years older than the mother.
Q. Do you know where he died?
A. He died right at the same place where Mr. Florida's mother died.
Q. Were they living with you there?
A. They were at the time. They had been living in Ohio but returned to Illinois before he died.
Q. What was the cause of his death, do you know?
A. Neuralgia of the head.

Judge Adams: I want the record to show that my objection applied to all this sort of testimony.

Q. How long had he suffered from that trouble?
A. Ever since he returned from the Mexican War.
Q. Can you tell the jury when that took place?
A. I cannot give you the year. I guess you all know when that was.
Q. How did the neuralgia affect him?
A. Well toward the last it got so bad that his eye-balls burst and then he only lived a few days after that.
Q. You say the neuralgia resulted from a wound received during the Mexican war?
A. Yes, sir, that is what they always said it was.
35 Q. How old was he at the time of his death?
A. Well you can figure that out. Loan was 37 years old when he died and he was only two years old when his father died, so you can figure it out yourself.
Q. Alonzo K. Florida was two years old when his father died?
A. Yes, sir.
Q. You cannot tell what year it was?
A. No, sir, but I think it was along in 1856—along about that.
Q. Do you know anything about the death of Alonzo K. Florida?
A. No, sir, only what I saw in the newspapers, that he committed suicide.
Q. All you heard was what the newspapers said about it?
A. Yes, sir.
Q. Did you have any talk with Mrs. Florida about it?
A. No, sir, I was down here at the funeral and was going up to speak to her when I found the lady I had taken to be Mrs. Florida was Mrs. Florida's sister who looks very much

like her. I did not see her after that and as everything was in confusion I left for home soon after the funeral.

Cross-Examination

By Judge Adams.

Q. You do not know of your own knowledge what caused the death of Mr. Florida, Senior?

A. Yes, sir, it was neuralgia of the head.

Q. Do you know what caused the neuralgia?

A. Yes, sir, it was caused by a wound that he received during the Mexican War and while on the walls of Chapultapec.

Q. Do you know anything of the circumstances under which this wound was received?

A. No, sir, I was not there at the time.

36 Q. All you know about it was that you heard he received a wound in the Mexican War and they said that caused neuralgia of the head which resulted in his death?

A. Yes, sir, that is the way it was.

Q. You do not know whether the mother died from female trouble or not?

A. I know that she had tumor of the womb.

Q. Practically the same thing?

A. I do not know as to that.

Q. You are not able to state positively the exact age of the father or mother at the time they died?

A. No, sir, not exactly.

Dr. T. A. Gordon, being called and sworn testified on the part of the defendant as follows:

Direct Examination

By Mr. Estes:

Q. State your full name?

A. T. A. Gordon.

Q. What is your occupation?

A. I am a practicing physician.

Q. Where is your place of business?

A. At 4565 Easton Avenue.

Q. Did you know the late Alonzo K. Florida?

A. Yes, sir.

Q. Did you ever attend him as his physician?

A. Yes, sir.

Q. Can you state whether he was sick at any time during the last three or four years?

A. He had an attack of the La Grippe during the winter of 1891 and 1892 I think.

Q. Could you fix that date a little more accurately?

A. I think it was about January, 1892. About the last of the month.

Q. You think it was the latter part of January, 1892?

37 A. I would not be positive now whether it was 1891 or 1892.

Q. What is the nature of the disease you call the La Grippe?

A. It is a disease that is catarrhal in its character and may be in a malignant form or it may be in a form so mild as to amount to little more than a bad cold.

Q. How long was Mr. Florida sick, do you remember?

A. About a week as well as I remember. I would not be positive about that though.

Q. Was he sick in bed a week?

A. He was in bed most of the time.

Q. How long did it take him to get well of the attack do you know?

A. I cannot give you the exact time as to that. He did not remain around the house very long after he got up.

Q. How long was it before he got entirely well?

A. I cannot say as to that.

Q. Is that a disease from which a person recovers quickly or otherwise?

A. It is a disease from which the patient recovers very slowly.

Q. You cannot state how long he was in recovering from this illness?

A. No, sir.

Q. Was he seriously ill at any time?

A. Yes, sir, he was right sick for a while.

Q. Did you ever have any business transactions with Mr. Florida?

A. Yes, sir.

Q. When did you have any business transactions with him?

A. Well I think I had several little transactions with him.

Q. Did you have a transaction with him in which he got $135 from you?

Judge Adams: I don't know what that has to do with whether this man killed himself or not. I object to it.

38 Objection sustained.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

Q. I will get you to state when you had any business transactions with him?

A. I hardly know what you refer to as I had several business transactions with him?

Q. Did Mr. Florida ever defraud you in any manner?

Objected to as incompetent and immaterial.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

Q. State what time you had any business transactions with him?

The Court: That inquiry must be limited to within a reasonable time.

Mr. Estes: There is one transaction that I want him to speak of but the witness does not seem to understand what I want. I have suggested the matter as far as I thought I dared go and that was to remind him of a transaction in which the sum of $135 was involved.

Judge Adams: Let him fix the time of the transactions and the Court can determine whether the testimony is material or not.

Mr. Estes: Can you state during what years you had business transactions with Mr. Florida, Doctor?

A. I had business transactions with him from about 1887 to 1891.

Q. Did he defraud you in any of these transactions?

Judge Adams: I object to that. There is no evidence of any transactions and now he asks if he was defrauded by Mr. Florida.

Objection sustained.

39 Defendant's counsel then and there excepted to the ruling of the Court at the time.

Cross-Examination

By Judge Adams:

Q. Doctor, la grippe prevailed in this City during the winter of 1891 and a great many people had it in all its forms; which you say may be so light as to amount to but little more than a bad cold?

A. Yes, sir.

Q. You do not call it a severe sickness?

A. In its malignant form it is a severe sickness. That to depends upon the way the patient recovers.

Q. The recovery in this case was good was it not?

A. Yes, sir.

Q. How long was he confined to his bed?

A. About a week.

Q. You say that soon after he was able to leave his bed he went down town to attend to his business?

A. Yes, sir, sooner than I would have recommended.

Q. Nothwithstanding which his recovery was complete?

A. Yes, sir, he finally recovered completely.

Q. And you never heard that he was left with any trouble on account of the disease?

A. No, sir, I never heard that he was.

Charles P. Wonderly, being called and sworn testified on the part of the defendant as follows:

Direct Examination

By Mr. Estes:

Q. State your full name?

A. Charles P. Wonderly.

Q. You knew Alonzo K. Florida during his lifetime?

A. Yes, sir.

Q. You saw him the day of his death did you not?

A. Yes, sir.

Q. Will you state the facts in regard to his death?

A. On the day that he killed himself I was in our office which was on the 4th floor of the Wainwright Building. He and I had offices together.

Q. Well go on and state what took place as you remember it?

A. He and I had a short conversation which was interrupted by some one coming in. Mr. B. F. Hammett, Jr., came in and then Mr. Florida went out for a little while and returned again. After his return I asked him when we were going out to look at the Topeka farm that we were trying to sell and he said that he would arrange for us to go on the following Monday. Soon after this he went up to the water bowl which stood in the corner of the room and pressed the faucet so that the water would run. It has one of those spring faucets that will shut off the water when you let go so he stood there holding it and I finally asked him what he let the water run so long for and he said he wanted to let it run to get cooler water. I noticed that he had a glass and that he took a drink and I walked up to him and remarked that I was glad he had bought a glass, and then I took a drink and went back to my desk. Finally he came over to me and told me that he had taken poison.

Q. Did he say what his reason was for taking poison?

A. No, sir. He did not have time for that. He commenced to sink to the floor and was dead before a word could pass between us. I remember that I took out my watch and it was 4:20 or 4:25 in the afternoon.

Q. How long prior to that was it that he went to the faucet and commenced to let the water run?

A. It was only a few minutes. I remember he stood there awhile letting the water run and I turned around and
41 asked him what he was letting it run so long for and he said to get cooler water and then he took a drink and I saw that he had a glass and I remarked that I was glad he had a glass and walked over to the basin and took a drink myself and then went back to my desk.

Q. Was there anything in his conduct on that occasion that impressed you as being strange?

A. No, sir, nothing whatever. I never thought of anything being wrong with him till he came over to my desk and told me he had taken poison and almost immediately he sank to the floor and was dead.

Q. Had he expressed to you the intention of killing himself?

A. No, sir, he had not.

Q. Do you know anything about the nature or character or Mr. Florida's deals in real estate in this City?

Judge Adams: I object unless he fixes the time.

Mr. Estes: Say during 1891 and 1892.

Judge Adams: Up to 1892 I make no objection.

A. I knew something of his deals.

Q. What was the nature of his business Mr. Wonderly?

A. He traded in real estate and bought and sold real estate like any one else.

Q. Do you know anything about any of his transactions in which he executed deeds of trust on certain pieces of property and afterwards sold the notes and deeds of trust and then had the deed of trust released on the record and executed others on the same property on which he borrowed money?

A. No, sir, I never knew anything about that except what was found out after his death.

Q. What did you find out after his death with reference to that fact?

A. Well I only know what I heard about it.

Q. What was said about that matter?

42 Objected to as incompetent.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Q. Did you after his death see any papers that he had issued in the manner I have described which were found to be fraudulent?

A. No, sir.

Judge Adams: You say that you did not see any such papers?

A. No, sir.

Cross-Examination

By Judge Adams.

Q. When did you first know Mr. Florida intimately?

A. I first knew him intimately say about December 1892 and from then on down to the day of his death.

Q. Did you know him in 1891 at all?

A. Yes, sir, I knew him then but not intimately.

Q. Do you know the general character of the business in which he was engaged prior to July, 1891?

A. No, sir, I do not.

Q. Do you know whether he was successful in his business transaction at that time or not?

A. He appeared to be very careful.

Q. I suppose you met him during those years?

A. Yes, sir.

Q. Was he of a cheerful disposition or otherwise?

A. He appeared to be very cheerful.

Q. How was he prior to 1891 and 1892?

A. Well I would not like to say just exactly as to that as I did not know him very well during those years.

Q. What was your opportunity for seeing him during that time?

A. You might say I saw him very seldom before December 1892.

Q. How often had you met him prior to the 24th of June, 1892?

A. I cannot say how often—several times at least.

43 Q. Was he cheerful at such times as you met him?

A. Yes, sir, as I recall him now he was very cheerful.

Q. Do you know what his business success was during 1891 and 1892?

A. Everything seemed to be coming his way—at least he always talked as though it was and he was regarded as a successful man.

Q. You are acquainted with the general character of the real estate business done during 1891 and 1892?

A. Yes, sir.

Q. Now especially in 1892 wasn't there a wonderful boom in the real estate business in this City?

A. Yes, sir, business was very active and a great deal of real estate changed hands.

Q. City and suburban property changed hands quickly and business generally was good?

A. Yes, sir.

Q. And the real estate men generally had prosperous times?

A. Yes, sir.

W. C. Stewart being called and sworn testified on the part of the defendant as follows:

Direct Examination

By Mr. Estes.

Q. State your full name?

A. W. C. Stewart.

Q. What is your occupation?

A. I am in the Life Insurance business.

Q. What company do you represent?

A. I represent the National of Vermont.

Q. Who is the General Agent of that Company?

A. I am the General Agent.

Q. Was Alonzo K. Florida insured in your Company?

A. He was.

44 Q. When was that policy taken out?

A. I have a copy of the application that he made and I can tell from that. Yes it was the 22nd of October, 1892.

Q. Do you remember what Mr. Florida stated in that application as to the age of his father and mother and the time they died and also as to the causes of their deaths?

Judge Adams: The application speaks for itself. Let him produce the application.

Mr. Estes: Have you that application?

A. I have a copy of that part of the application.

Q. Where is the original application?

A. It is on file at the home office in Montpelier, Vermont.

Q. Was it never returned to you?

A. They never return them. The applications are kept on file there.

Q. Have you a copy of the application?

A. Yes, sir, we keep a record of those matters here.

Q. Do you know of your own knowledge the contents of

that application relating to the age of the father and mother and the cause of the death of his parents?

A. Yes, sir.

Q. What does it state in that regard?

Judge Adams: We object to that.

Objection sustained.

The Court: I cannot permit him to testify as to the contents of that application.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

45 James E. Baker being called and sworn testified as follows on the part of the defendant.

Direct Examination

By Mr. Estes:

Q. State your full name?
A. James E. Baker.
Q. What is your business?
A. I am in the life insurance business.
Q. What company do you represent?
A. The Mutual Life of New York.
Q. What is your position with reference to that company?
A. My brother and I are the General Agents of the Company.
Q. Was Alonzo K. Florida insured in your Company?
A. He was.
Q. Have you the application made by him under which that policy was issued?
A. I have a copy of it.
Q. Where is the original application?
A. It is at the home office.
Q. The original application is on file at the home office in New York?
A. Yes, sir.

Mr. Estes: I suppose under the ruling made a moment ago in regard to the application for a policy in the National of Vermont this witness would not be permitted to testify as to the contents of the application.

The Court: I could not permit that.

Counsel for defendant then and there excepted to the ruling of the Court.

Cross-Examination

By Judge Adams.

Q. When was that policy issued?
A. I do not remember. The application was dated May 21st, 1892.

46 Mr. Estes: May 21st, 1892?

A. Yes, sir.

Judge Adams: The policy was paid?

A. Yes, sir.

Mr. Estes: You have no suicide clause in your policies?

Objected to on the ground that the policy will speak for itself.

Objection sustained.

Gilbert J. George, of lawful age being produced, sworn and examined on the part of the defendant testified as follows:

Direct Examination

By Mr. Estes.

Q. State your full name?
A. Gilbert J. George.
Q. Where do you reside Mr. George?
A. At Fairfield, Illinois.
Q. In what business are you engaged?
A. I am an attorney at law and I deal in real estate also.
Q. Did you know the late Alonzo K. Florida?
A. Yes, sir, I knew him.
Q. When did you become acquainted with him Mr. George?
A. I think I had known him about six years. I think so.
Q. Did you know him intimately?
A. Well I knew him intimately for two or three years.
Q. You mean the last two or three years of his life?
A. Yes, sir.
Q. Did you ever have any conversation with Mr. Florida, about insurance on his life?
A. Yes, sir.
Q. What time was the first conversation you had with him about insurance on his life?

Judge Adams: At the time you had this conversation with him about insurance on his life, were you acting as
47 his attorney?

A. No, sir.

Mr. Estes: What time was that Mr. George? Did you have more than one conversation with him in regard to insurance on his life?

A. Yes, sir.

Q. Now then when was the first conversation you had with him about this matter of insurance on his life?

A. The first conversation was in the spring of 1892. I think it was some time in May.

Q. What was the reason for your talking with him about the matter of insurance on his life? What brought it about? You say you had such a conversation? Now what brought it about?

The Court: State what was said Mr. George.

A. Well Mr. Florida told me he wanted me to find out from a man who was agent,—he wanted me to find out from my son-in-law who was an agent of a life insurance company here or rather he was in the office of the agent here in the city and Mr. Florida wanted me to find out from him if his Company would issue a policy to him that did not have in it the "Suicide Clause."

Q. That was the first conversation you had with him about that matter?

A. Yes, sir.

Q. Who was this man he wanted you to go and see?

A. My son-in-law who was in the office with Mr. Stewart who testified here.

Q. Your son-in-law?

A. Yes, sir.

Q. Florida wanted you to find out what Company would issue a policy that did not have the "suicide clause" in it?

A. Yes, sir. He wanted to know what Company would issue a policy without a "Suicide Clause" in it.

Q. Then what further conversation did you have with him?

48 A. I do not know that anything further was said on that particular occasion.

Q. Did you make a report to him in regard to the matter?

A. No, sir, he simply asked me if I would make the inquiries but I did not do it, I would not do it.

Q. You did not say anything to your son-in-law about it then?

A. No, sir, I did not mention the matter to Mr. Dickson.

Q. Mr. Dickson is your son-in-law?

A. Yes, sir.

Q. You did not say anything to Mr. Dickson about it?

A. No, sir.

Q. What further conversation did you have with Mr. Florida on this subject of life insurance?

A. Well I had a good many conversations with him about it.

Q. What I want is to have you state as near as you can what was said by Mr. Florida to you on this subject during any of these conversations and when the conversations occurred?

A. Well we had quite a number of conversations.

Q. You have fixed the first one along in May 1892. How do you fix that date?

A. It was just a few days before that, that Mr. Florida and I had a settlement. He made up the account between us or rather had it made up and we had a settlement which was in May 1892 and I know it was just a little while before that.

Q. You and Mr. Florida had been having some dealings together and this was the occasion or near the occasion of making a settlement?

A. Yes, sir. He gave me a written obligation with regards to some of our business matters and there was some notes out on property that I had arranged with him to take up and it was at that time that he gave me a written contract regarding them. Rather the contract was one between us mutually and was entered into about the middle of May, I should say about the 16th. The matter shows on the books and
49 Mr. Jones has those books. I know a day or two before they had gotten the book account fixed up and we entered into a little agreement which was written on the face of the book which will show for itself. Mr. Jones has those books, I haven't got them now. We both signed the agreement on the books, Mr. Florida and I.

Q. I understand that Mr. George, now what I want to know is what conversation did you have with him in regard to Life Insurance policies that did not contain the "Suicide Clause?"

A. That is the conversation I am telling you about when he asked me to see my son-in-law and find out what Companies issued policies without the "Suicide Clause."

Q. That you stated was a few days prior to the settlement?

A. Yes, sir, it was just a few days prior to the time.

Q. Well now what further conversation did you have with him in regard to this matter after that?

A. The conversation we had then was at the time or just before the time we made this settlement.

Q. I know that. What I want you to do is to go on and state any further conversation you had with him in reference to insurance matters in connection with "suicide." I think

you stated you did have further conversations with you on that subject?

A. Yes, sir.

Q. Please state as near as you can then what passed between you about this subject of Life Insurance?

A. The next time that I remember of, but I cannot give you the date was when we talked about the matter, when he got some money from me to pay his insurance which he said was for Mrs. Florida.

The Court: For whom?

A. For Mrs. Florida.

Mr. Estes: Go on.

A. In fact I went with him one time and gave my
50 check to pay for some insurance that was for the benefit of Mrs. Florida.

Q. Did you ever go out to his house?

A. Yes, sir, I have been out to his house frequently.

Q. Did you ever have any conversation with him out at his house, with him and with Mrs. Florida or with Mrs. Florida in his presence about Life Insurance Policies?

Judge Adams: Let him fix the time.

Mr. Estes: I ask the general question if he had such a conversation. If he did he will fix the time?

A. Do you mean with one or both or how?

Q. With either or both of them?

A. I don't remember of talking with Mrs. Florida about Life Insurance but once.

Q. You did have one conversation with her?

A. Yes, sir.

Q. About when was that Mr. George?

A. Well it was some time in the winter.

Q. During what winter?

A. The winter before he killed himself.

Q. Let me get at it this way. Did he say anything with regard to any policy in the New York Life Insurance Company?

Judge Adams: Now you are getting back onto conversations with Mr. Florida. What time was it Mr. George?

A. It was during the winter of 1892.

Mr. Estes: I thought you said it was the winter before he killed himself?

A. Well this was the winter of 1892 and 1893.

Q. Then go on, state what the conversation was and what brought it about?

A. It was the time he had just taken out some policies in the New York Life Insurance Company.

Judge Adams: Fix that date a little more definite Mr. George. To say it was during the winter is rather too indefinite?

51 A. I think it was about January, 1893,—about that time.

Mr. Estes: What conversation was that?

Judge Adams: We object if the court please to any conversation occurring in January 1893 being entirely too remote. It appears that the last of these policies was issued in July 1892 and now he is talking about matters that occurred nearly a year afterwards.

The Court: I will overrule the objection for I think it for the jury to say what weight shall be given to the testimony,—we will take the testimony for what it is worth.

Plaintiff's counsel then and there excepted to the ruling of the court at the time.

Mr. Estes: State what occurred at his house?

A. He told me he had taken out some policies in the New York Life,—

Q. Did he say how much?

A. My recollection that he said it was fifty thousand dollars ($50,000).

Q. Go on?

A. My recollection is that I asked him if it was taken out for the estate and he said it was taken out for Mrs. Florida.

Q. Do you remember what brought this matter up?

A. I think that he wanted some money to pay for the insurance and I did not want to let him have it and I told him that I thought he had insurance enough.

Q. Then what?

A. He said he would give his note.

Q. To whom was he to give his note?

A. To the company or to the agent for the premium on the $50,000. of Life Insurance.

Q. I don't think I quite understand you?

A. He said they would take his note for the amount of the premiums for such and such a number of days and by that time he would either pay the note or it would not be necessary to pay it.

52 Q. How long did the note have to run?

A. I think it was to run sixty days.

Q. And he remarked that he would either have the money within that time to pay the note or it would not be necessary to pay it?

A. Yes, sir.

Q. Do you remember the amount of that note?

Objected to as immaterial.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Q. State what was said, if anything, further was said at that time?

A. Well we were having a great deal of trouble with him about that time.

Q. Who was having trouble with him at that time?

A. Well people were pressing him for money.

Q. What was his general condition at that time, was any body else troubling him?

Judge Adams: At what time?

Mr. Estes: My question was what was his general condition, his general financial condition at that time, that is about January, 1893?

Objected to as incompetent, immaterial and irrelevant.

The Court: The question is objectionable in that form.

Mr. Estes: Mr. George, do you know Mr. Florida's financial condition in January, 1893?

Judge Adams: I object to that question as being incompetent, immaterial and irrelevant. I think this is entirely too remote to connect it with this contract of insurance.

Mr. Estes: I want to find out if this witness knows about his financial condition in January, 1893. If Mr. George does know about his financial condition, he ought to be
53 permitted to state it.

Judge Adams: We think it is entirely too disconnected. One contract of insurance is dated in July 1891 and one is dated in July 1892 and he is now seeking to ascertain this man's financial condition in January, 1893 and we submit that it is too remote to have any bearings on the issues of this case.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the court at this time.

Q. Mr. George did you ever go to Mr. Florida's house and have any conversation with him in the presence of his wife about Insurance Policies?

A. You say Mrs. Florida's presence?

Q. Yes, did you have any conversation with him at the house during which Mrs. Florida was present?

Judge Adams: Fix the time?

Mr. Estes: Well say in the latter part of 1892 or the first part of '93?

A. I don't think I had a conversation with the two together but I had a talk with Mrs. Florida about policies of insurance.

Q. What did she say about it?

Judge Adams: When was it you had the talk with Mrs. Florida on the subject?

The Court: What bearing would that have on the subject anyway?

Mr. Estes: I want to find out what the conversation was first then I think I can show its bearings.

Judge Adams: I don't think that any conversation Mr. George may have had with Mrs. Florida would have any bearing on the issues that are presented here and we object to it.

54 Objection sustained.

The defendant's counsel then and there excepted to the ruling of the court at that time.

Mr. Estes: Was Mr. Florida there at the time?

A. No, sir, he was not there.

Q. Were you ever present in his house, when Mr. Florida asked his wife to bring out his insurance policies so that you and he could look over them?

A. Mr. Florida told me that Mrs. Florida wanted me to look at the insurance policies. That is all. He was not there when I looked at them.

Q. You did look at them, but as a matter of fact he was not there at the time?

A. Yes, sir.

Judge Adams: When was it Mr. George that he wanted you to look at those policies?

A. I think it was just after he had taken out the policies in the New York Life for the policies were there and they had not been issued very long. I do not remember the date

exactly. I know it was along in the winter. About January, I think. I do not know the date of the policies.

Mr. Estes: What did Mr. Florida say?

Judge Adams: You are now speaking of January, 1893?

Mr. Estes: Yes, January, 1893.

A. Mr. Florida made a remark to the effect that Mrs. Florida wanted me to come out to the house and look over the insurance policies.

Q. He stated to you that Mrs. Florida wanted you to come out to the house and look over the insurance policies?

A. Yes, sir, he called her by her first name, I think he said "Lill" wants you to come out and look over the policies of insurance.

Judge Adams: Were you advising them in a legal capacity at that time?

A. No, sir.

55 Q. You were merely advising them in a friendly way?

A. Yes, sir.

Judge Adams: Is it not a fact that he said that Mrs. Florida wanted you to look at the policies to give your advice as a lawyer in regard to them?

A. I will state the whole conversation.

Judge Adams: I am entitled to an answer.

The Witness: If you will let me state the whole conversation I will answer your question.

Q. I put the direct answer to you. Were you not at that time requested to go out or rather did not Mrs. Florida request you to come out in order to have you give your opinion as a lawyer in regard to these policies?

A. No, sir, and I think you will understand me better if you let me tell you what Mr. Florida said about it.

Judge Adams: I am not asking for that I simply wanted a direct answer in regard to the capacity in which you were called out to the house.

Mr. Estes: Now I will ask the witness to give the conversation leading up to the request. State what Mr. Florida said to you?

Judge Adams: I object to the conversation as being too remote to have any bearing on the policies issued in 1891 and 1892.

Mr. Estes: I will put the question in this form, state the conversation that occurred between you and Mr. Florida on this occasion in January 1893 upon the subject of these policies of insurance?

Judge Adams: Now I object again. This testimony can have no possible bearing upon the contract of insurance entered into in 1891 and 1892.

56 The Court: This testimony standing alone would not be admissible and would have to be excluded from the jury unless it is connected directly with the contract of insurance sued on in this case.

Judge Adams: Then I take it that it devolves upon Mr. Estes to make the avowal that he will connect it and let the testimony and avowal go in together. I do not want it to go in, in this disconnected way.

Mr. Estes: I outlined my case when I made my opening statement and while I cannot develop all these matters at once in bringing out this testimony I shall be able to connect it later on.

Judge Adams: Then I understand that you state that you propose to show the connection between these matters otherwise I will ask the court to reject it now.

Mr. Estes: I can show the connection.

Q. Now Mr. George state that conversation. That is state the conversation you had with Mr. Florida in regard to going out there to look at these policies?

A. Mr. Florida said that his wife wanted me to come out to look over these policies, that he was satisfied they were all right, as it didn't make any difference whether the "Suicide Clause" were in them or not. That he had ascertained that it didn't make any difference. He said you would not do it, and I have gone and found out that it makes no difference. She wants you to look at them and she has a great deal of confidence in what you say and you can tell her [than] the premiums are all paid.

Mr. Estes: Did you tell Mrs. Florida that the premiums were all paid?

A. I do not remember about that now.
Q. Did you see the policies?
A. Yes, sir.
Q. Where did you see the policies?

A. Mrs. Florida had them. She brought the poli-
57 cies out and we sat down in a room and looked over the policies.

Q. You looked them over?

A. Yes, sir. I did not read all of them. I don't think.

Q. You examined them but you did not read each one of them through?

A. Yes, sir.

Q. Did you ever have any other conversations with Mr. Florida about insurance?

A. I did. As I told you before the first conversation I had with him about Life Insurance or about taking out policies was in the middle of May. I do not remember the exact date but it was about the time of our settlement which was on the 16th of May. Then it was when he asked me to ascertain from my son-in-law what companies issued policies without the suicide clause.

Q. What time was the next conversation you had with him?

A. It was about the time we made the settlement when he got into some trouble and he came to me about it.

Q. What did he say?

A. He said he had got into some trouble with some parties about a mortgage.

Judge Adams: When was that?

A. That was about the middle of May.

Q. About the middle of May 1892?

A. Yes, sir, about the 15th of May 1892. It was the day before we had our settlement.

Mr. Estes: What did he say?

A. He told me that these parties were given him trouble about a deed of trust or mortgage which he had satisfied.

Q. How is that?

A. He said he had satisfied a mortgage or filed a release through mistake and the parties were after him about it.

Q. Well what else did he say?

A. He said he was willing to pay the money to the
58 parties but the parties did not seem willing to take it.

Q. Did he say what the parties wanted to do?

A. He said they had threatened him with arrest or wanted to arrest him.

Q. Did he say anything further about it?

A. He said it was just a mistake or an oversight on his part. I think he mentioned that this matter had occurred twice and that one of them he had fixed up and that one of them he was willing to fix up, but the parties were disposed to make trouble about it.

Q. What did he say in regard to their threats of arrest?

A. He said he would not go to jail, he would kill himself first.

Q. Then it was he spoke to you about this matter of insurance?

A. It was along about that time, yes, sir.

Q. He said he would kill himself before he would go to jail?

A. Yes, sir. He said the parties did not seem willing to let him fix it up. He said he did not have the notes and had filed the release through a mistake. I supposed that it was a mistake and never knew until after his death anything about these other matters.

Q. When did you next have a conversation with him in regard to insurance or his method of dealing?

Judge Adams: When was it?

A. I do not remember hearing him saying anything about it until some time after that, in the summer I think and he said that he had some insurance that he didn't care about carrying and he was going to let it lapse.

Mr. Estes: Do you know what Company that was in?

A. I do not know that I can give you the name of the company but it was some kind of an association.

Q. Was it the Provident Life Association?

A. I would not be sure about the name. I know they
59 had their office down at Fourth and Olive.

Q. Fourth and what?

A. Fourth and Olive.

Q. Where did you say their office was?

A. At Fourth and Olive.

Q. He said it was an assessment company and he was going to let it lapse?

Judge Adams: I object to the form of the question.

Mr. Estes: What did he say about the Company?

Judge Adams: What Company?

Mr. Estes: This Company in which he was going to allow this insurance to lapse.

A. He said he was going to let the insurance lapse as he was not satisfied with the company.

Q. How much did he have in that company that he was going to allow to lapse?

A. I think he had fifteen thousand dollars.

Q. Why was he going to allow it to lapse?

A. He said he was not satisfied with the insurance.

Q. As a matter of fact had it lapsed at that time?

A. I don't know whether it had lapsed at that time or whether he was going to allow it to lapse.

Q. What else did he say about the policies in that Company?

A. He said his reason was that he was afraid that company would not pay up, and that Mrs. Florida would not get her money.

Q. Well then did you have any conversation with him during the fall that you can remember now?

A. This conversation that I am telling you about when he spoke of letting the policies in that company lapse took place during the summer of 1892, I think it was in August, I know it was very hot weather at the time.

Q. My question was did you have any further conversation with him?

60 A. Yes, sir, I had conversations with him after that.

Q. State the next conversation you had with him after that with reference to insurance or to suicide?

A. Well with reference to insurance he said that he was going to take out some insurance for his estate.

Judge Adams: When was it. I think we are entitled to the dates in these matters.

A. I think it was about the first of December.

Judge Adams: Of what year?

A. I think about the first of December, 1892.

Mr. Estes: He talked with you then about taking out more insurance for his estate?

A. Yes, sir, I think at the time he was buying or had bought some insurance for his estate. I know he did take out one policy after that.

Q. State anything else that was said?

A. I think it was again some time in January that he said he was going to take out some more insurance as he had some deals with some men in town here and he was going to take out enough to boom himself with several fellows.

Q. What did he say he was going to take out the insurance for?

A. He said he wanted to boom himself with several fellows with whom he had dealings and I think one expression was that he said he wanted to strengthen their backbone by big insurance policies.

Q. Who was he dealing with at that time when he sought to impress in that matter?

A. Well Judge Christian for one and Mr. Wonderly for another.

Q. Did he tell you of the character of the deals he had with them?

A. No, sir, he did not, I knew about it.

Q. Did he tell you anything about it then?

A. I don't remember that he said anything further
61 about it than I have already stated. I heard the deals with Judge Christian discussed afterwards.

Q. Did you ever hear Mr. Florida say anything more about any insurance policies having the suicide clause in them?

A. I think I did.

Q. What did he say?

A. He said he had satisfied himself in that regard and wasn't bothered about the suicide clause.

Q. Did he ever talk to you about the suicide clause in any old policies he had?

A. I don't remember about that, I don't think he did. I cannot remember it. I know he said he was satisfied on the question that suicide made no difference.

Judge Adams: When was that?

A. That said [said] by him at the time he told me that Mrs. Florida wanted me to come up and see those policies.

Q. That was in January 1893?

A. Yes, sir, just after the New York Life Policies had been taken out.

Judge Adams: Then I object to this testimony as being a repetition. He has already gone over this ground once before.

Mr. Estes: He never made that statement before, I have been trying to get out of him all that Mr. Florida said on that occasion.

Q. Do you remember whether Mr. Florida was sick at any time during the winter of 1892?

A. I do not remember just when it was but I know he was sick during that winter.

Q. Do you know the nature of his illness?

A. Yes, sir, he had the grippe.

Q. Did you call at his house to see him at any time during his illness?

A. Yes, sir, I think I was there when he was sick.

Q. While he was sick?

A. Yes, sir, he had what is commonly called the
62 Grippe.

Q. Did he ever say to you or state to you or talk to you about having trouble with certain people in town here?

Objected to as incompetent, immaterial and irrelevant.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

Q. Did you ever have any further conversation with Mr. Florida about this question of life insurance policies or about the question of suicide other than you have already stated?

A. I have stated all that I can recall now. Of course Mr. Florida and I had a great many conversations and it would be pretty hard to recall all of them.

Q. How often did you see Mr. Florida, say from the beginning of 1892 down to the time of his death?

A. Well that would be pretty hard to say. I should say almost every week. I was here considerable of the time as I was buying and selling real estate in St. Louis.

Q. And during that time you saw him quite often?

A. Yes, sir, I had a desk in Mr. Florida's office.

Q. You had a desk in Mr. Florida's office?

A. Yes, sir.

Q. Did you go to his house at any time?

A. Yes, sir, used to go to his house at times but as I had a daughter living in town here I stayed there a great deal.

The Court: Those details are not material Mr. Estes.

Mr. Estes: After this talk you had with him in May, 1892, about those mortgages or deeds of trust that he said he had satisfied on the records and for which he said these parties were likely to make him trouble and were threatening his arrest, did you ever have any other conversation with him in regard to his deals with different people.

63 Judge Adams: I submit that he ought to fix the time.

The Court: The question in its present form is objectionable.

Mr. Estes: Did Mr. Florida ever state to you at any time and if so at what time, anything with reference to trouble he was havng with parties with whom he was dealing?

Objected to as immaterial.

Objection sustained.

Defendant's counsel then and there excepted to the rule of the court at the time.

Q. Do you know Mr. George whether or not any people

were threatening Mr. Florida with prosecution in this City because of his fraudulent transactions with them?

Objected to as immaterial.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

The Court: If he has any personal knowledge of these matters let him state them. You cannot get at it in the manner you are now trying to bring it out.

Mr. Estes: I ask the question in as general a way as possible. I wanted to know if he had any statement from Mr. Florida with reference to his real estate transactions? I think that would be perfectly competent. I have a right to go into these matters as it is a part of Mr. Florida's method of dealing.

The Court: I have already ruled that question is objectionable in that form.

Mr. Estes: I think the Court is hypercritical.

64 Q. Did you ever have Mr. Florida state to you that he had had trouble with people in regard to his real estate transactions?

Objected to as incompetent, immaterial and irrelevant.

Mr. Estes: I will put the question in this form. State whether or not Mr. Florida was being threatened by a number of people of this town by reason of real estate deals in which he was interested?

Judge Adams: It is utterly incompetent for him to ask what other people may have said about these dealings.

Mr. Estes: My question is, did he say anything with reference thereto, to you?

A. Yes, sir.

Judge Adams: The last part of it then is admissible under the ruling given by the Court that he must connect it with this contract of life insurance. I submit now that he ought to fix the time.

The Court: Fix the time Mr. Estes.

Mr. Estes: I was going to do that. I first asked the general question if he had such a conversation. Now Mr. George please fix the time?

A. Well it was sometime prior to his death,—probably in January.

Q. January, 1893?

A. Yes, sir.

Q. Now state what he said to you with reference to those matters?

Objected to as incompetent, immaterial and irrelevant.

Judge Adams: I think it is about time that he is showing the connection between these matters and these contracts of life insurance. He has promised to do so and I think before we get in any more of this testimony we are entitled to have him show the connection.

Mr. Estes: I will state to the Court that a great
65 many of these transactions were not discovered until after Mr. Florida's death and I cannot bring these matters all out at once and for the reason I am bringing out this testimony now and will connect it later on.

Q. Tell what he said to you? I think you said it was about January, 1893?

(At this stage of the examination an adjournment was taken until 10 o'clock a. m. to-morrow, October 2nd, 1894.)

St. Louis, Missouri, October 2nd, 1894.

Court met pursuant to adjournment when the following proceedings were had.

Gilbert J. George, being again on the stand, his further examination was resumed as follows:

By Mr. Estes: You said in your examination yesterday that you had some conversation with Mr. Florida with reference to some fraudulent real estate deals and he spoke to you with reference to threats of prosecution made by some parties. When was the first time you had such a conversation with Mr. Florida?

A. The first conversation I had with Mr. Florida was about the first of December, 1891.

Q. Will you please state what took place at that time as near as you can remember it?

A. He said he had made a mistake.

Q. Mr. Florida said he had made a mistake?

A. Yes, sir.

Q. In what regard?

A. He said he had made a mistake and had been careless and had neglected to take up a mortgage where he had filed the satisfaction of it, and that a number of people were
66 complaining about it and had threatened him.

Q. Had threatened him in what way?

A. Had threatened him with arrest.
Q. What did he say further?
A. He said, he had disposed of the notes and was willing to pay them off, but they were not satisfied to have it that way and threatened arrest.

The Court: What is your object in going over this again Mr. Estes. This witness gave the very same testimony yesterday.

Mr. Estes: I do not remember that we went into this matter yesterday.

The Court: I remember it very distinctly. The records will show that he has stated several times that Mr. Florida spoke to him about having made these mistakes and he was willing to pay off the notes but that the parties threatened him.

Mr. Estes: Did you ever hear Mr. Florida say anything further with reference to suicide?

Judge Adams: We went through a series of conversation both on the subject of suicide and subject of life insurance policies and this witness detailed very carefully everything that was said and I don't think that he is entitled to commence this morning and go right over the same ground.

Mr. Estes: I was asking simply with reference to suicide? Did he state anything about suicide?

Judge Adams: I object to the question because this matter was all gone over yesterday and he detailed fully everything that Mr. Florida said to him.

The Court: If you have anything new Mr. Estes you may bring it out.

Mr. Estes: What did he say Mr. George?

Judge Adams: Fix the time?

67 A. It was about December, 1891.

Mr. Estes: What did he say?

The Court: That is the very conversation you were talking about a moment ago.

Mr. Estes: This is another matter.

The Court: Well if it is a new matter bring it out.

Mr. Estes: What did he say?

A. He said that he would kill himself before he would go to jail.

Judge Adams: We had that very same matter yesterday.

The Court: I will sustain the objection on the grounds that this matter has been gone into before.

Defendant's counsel then and there excepted to the ruling of the Court.

Q. Mr. George did he ever talk about committing suicide at any other time but that which you have just mentioned of December, 1891?

Judge Adams: I don't like to be captious but he is certainly attempting to go over the same ground, I certainly must object to it.

Mr. Estes: My questions yesterday were directed entirely to what he said about life insurance. My questions are now directed as to what he said about suicide. I ask if he ever said anything more to this witness about suicide than was mentioned in the conversation in December, 1891.

The Court: You may put the question in that form then.

Mr. Estes: Did you ever have any conversation with him in regard to committing suicide other than the conversation you have detailed which occurred in December, 1891?

A. I think it was on the 15th of May that he spoke about that matter too.

The Court: Didn't the witness recite that conversation of May 15th which he said was about the time they had
68 some kind of a settlement?

Mr. Estes: I asked him the question then with reference to life insurance.

A. It was the time we had that settlement.

Q. Don't go into the matters of that settlement. My question is, did he say anything about committing suicide about that time.

Judge Adams: We object to it on the grounds that he has already gone over that conversation of the 15th of May 1892 and has detailed everything that occurred.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Mr. Estes: If the court please I do not want to go over the same ground but I do want to ask him if he said anything with reference to suicide?

The Court: Well proceed. I remember he detailed that conversation two or three times and while I do not want to narrow you down I do not want a repetition of testimony that has already been gone over two or three times.

Mr. Estes: Did you ever have any conversations with Mr. Florida about making a will?

Judge Adams: When?

Mr. Estes: I asked the general question if he had such a conversation and if he answers that he did I will then fix the time.

Q. Mr. George did you have a conversation with Mr. Florida at any time about making a will?

A. Yes, sir.

Q. When was it?

A. It was in the fall of 1892. I do not remember
69 the exact date but I know it was during that fall.

Q. The fall of 1892?

A. Yes, sir.

Q. What did he say at that time about making a will?

Judge Adams: I object to any conversation with Mr. Florida in the fall of 1892 as being too remote and as being utterly irrelevant.

The Court: I cannot presume now that it is irrelevant.

Judge Adams: I think it is too remote, one contract of insurance is of July 1891 and one of July 1892 and I think a conversation in the fall of '92 is entirely too remote.

The Court: I will admit the testimony for the present, I will overrule your objection.

Plaintiff's counsel then and there excepted to the ruling of the court at the time.

A. Well he said,—

Q. Who said Mr. George?

A. Mr. Florida said he wanted to get enough life insurance to protect his friends and it would take one hundred thousand dollars to do that, and that seventy-five thousand dollars would fix his wife, and that he wanted to make a will. He said, I want to wind up my affairs and make a will and make you and the Secretary of the Mississippi Valley Trust Company and Mr. Hammet executors of my will and I want you to look

after my friends, you and Mr. Hammett and protect them and Mr. Jones will protect Mrs. Florida.

Q. How much insurance did he say it would take?

A. He said it would take one hundred thousand dollars to protect his friends and seventy-five thousand dollars for Mrs. Florida. I told him I wanted him to quit any of that sort of talk for I had no confidence in anything of that kind or what he said he was going to do.

70 Q. What did he say he was going to do?

A. He said he wanted to get these things fixed up and wind up his affairs. He said he had been contemplating leaving the country and I said to him, "that is a new fad you have got."

Q. He said he was going to leave the country?

A. Yes, sir.

Q. Did he ever say anything more about going to leave the country?

A. I never heard him mention anything about leaving the country after that.

Q. Did he mention anything about killing himself after that?

A. Yes, sir, he did.

Q. When and where?

A. I do not know how many times, he threatened it several times.

Q. Where did you ever hear him make that threat?

A. I heard him make the threat down at Judge Christian's office.

Q. You heard him make that threat at Judge Christian's office?

A. We were not actually in the office at the time but were in the hall when he made the statement.

Q. What was the occasion of your being there if you remember?

A. Mr. Florida wanted to see Mr. Wind who had gone up to see what he could do about the bank affair.

Judge Adams: What time was that?

A. That was in January.

Q. January, 1893?

A. Yes, sir.

Mr. Estes: Go on?

A. Mr. Wind was to start that night to see about the bank's affairs. I think they had made an assignment or something of that kind.

Q. You mean the bank had made an assignment?

A. Yes, sir.

Judge Adams: That is not material.

The Witness: That was said to me when we were standing by the window on the fourth floor on the south side.

71 Mr. Estes: What did he say?

A. He said that if he knew these things would come out that they intended and that the insurance would be all right, he would not go home a live man.

Q. The statement was made in connection with the talk that was had about the affairs of the bank?

A. Yes, sir.

Q. What did he say further?

A. He made that statement in connection with talking of those matters.

Q. Did he say who owned the bank?

A. He and his people owned it.

Q. Who do you refer to by his people?

A. Well I don't know who was interested with him but it was my understanding that he owned the biggest part of it.

Q. Mr. Florida did not run the bank?

A. Yes, sir, but it is my recollection that the man that run the bank was there that day.

Q. You think the man that run the bank had been there that day?

A. That is my impression.

The Court: What do you mean when you say it was your impression?

A. I mean that is what I recollect.

The Court: You mean your best recollection?

A. Yes, sir, it is my best impression that the man who run the bank was there that day. I would not be certain about it, that is that he was there that particular day but I am certain that he was there along about that time and it is my best impression that it was that day.

Mr. Estes: You think the man who run the bank was down that day?

A. Yes, sir, there was one or two days that Judge Christian and Mr. Wind were working on those matters and Mr. Florida was there at their office and this was one of those occasions when he was there.

72 Q. He had been there consulting his attorney about it?

A. Yes, sir, and it is my recollection that they were going to wind up the bank's affairs. I don't say positively the man

who run the bank was there that day but it was very near about that time.

Q. Do you remember the name of the man who run the bank?

A. It was some name like Cockerill.

Judge Adams: I object to these matters, I don't think they are material.

Mr. Estes: Where was that bank located?

A. It was located at Arrow Rock, up here in Missouri.

Q. Then as I understand you he told you that day in the hall there by Judge Christian's office that if he was sure, or if he knew that the insurance was all right, he would not go home a live man that day?

A. Yes, sir.

Mr. Estes: Did you hear him say anything further about committing suicide after that?

A. Yes, sir.

Q. Where was it and about what time?

A. Well it was the time he gave me a contract, I think that was about in February. I had a contract with him about some obligations that had been changed. I stated that he had a contract that was entered into about the 16th of May, 1892 and some of the obligations had been changed and he was to assume some and some had been taken up and others renewed and this contract that he had in February was intended to straighten these matters out.

Q. Do you recollect about what time in February that was?

A. I think that was on the 26th of February.

Q. About the 26th?

A. Yes, sir, I was at my home and he telegraphed for me to come down immediately.

Q. You were at your home over in Illinois?

73 A. Yes, sir, and he telegraphed for me to come over immediately and when I came I found him in a very nervous condition or rather in a very despondent condition, and I will say now that that was the first time that I became alarmed about his condition. I had never thought before that [that] there was any real danger that he might carry out his threat. I did not know that he was in as much trouble as he was. Then we made this contract he wrote it himself covering these matters. He then told me how I would be protected as he said he wanted to protect all his friends and he gave me this contract which, if I am not mistaken, was dated the 26th day of February, 1893.

Q. Where was that contract prepared?

A. Up at his house, right in his parlor.

Q. What did he say Mr. George at that time up there at his house?

Objected to on the grounds that the inquiry is too indefinite.

The Court: I will overrule the objection.

Plaintiff's counsel then and there excepted to the ruling of the court at that time.

Q. You say you were up at his house at the time?
A. Yes, sir, we were in his parlor at the time.
Q. The contract was drawn up in the parlor of his house?
A. Yes, sir.
Q. What did you say his condition was at that time?
A. He was nervous and appeared to be very much distressed or disturbed and said he was not himself. He said he could not sleep at night or had been up the night before or words to that effect.
Q. He said he was much distressed and could not sleep at night?
A. Yes, sir. And he said when he handed me the contract, "this will protect you and make you all right," and he
74 added that he had told his wife all about it, or I think his exact words were, "I have told Lil all about it," meaning his wife.
Q. What else did he say?
A. I don't know that anything particular was said, except as I stated, but I told him that he must stop these matters and go down and I told him he had better go down town and give up his foolishness.
Q. What reply did he make to that?
A. He said that if he took his life it would not disgrace his family any worse than to uncover some matters whatever they were, he did not tell me what.
Q. Did you have any conversation with him after the latter part of February?
A. I don't think that I did after that time, in fact if I did, I do not remember it well enough to state anything definite about it.

The Court: This you say was in February, 1892?

A. February, 1893.
Q. What was his financial condition at that time Mr. George?
A. Well he was seriously,—

Judge Adams: I object to any statements as to his financial condition in February 1893 and after the ruling of the Court.

Mr. Estes: I asked him to state what his financial codition was at that time?

Judge Adams: And I object to it as being too remote and as being incompetent, immaterial and irrelevant.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Cross-Examination

By Judge Adams.

Q. Where do you live?
A. I live at Fairfield, Illinois.
75 Q. How far is that from this place?
A. One hundred and ten miles, about.
Q. When did you first become acquainted with Alonzo K. Florida?
A. I got acquainted with Mr. Florida in 1886, I think that is my recollection.
Q. Where was he living at that time?
A. That was before he came to St. Louis and I am not sure whether he had moved to Missouri or was still living in Illinois, I think he moved to Missouri about that time, but whether he had moved when I first met him or not, I do not know.
Q. When did he leave Illinois?
A. I think he left Illinois and came to Missouri about 1887.
Q. Have you ever met him in Illinois?
A. Never to know him.
Q. What was your first connection with him?
A. My first connection with him was concerning a deal. Mr. Florida was making a deal about some property.
Q. Some property that Mr. Florida was interested in?
A. Yes, sir.
Q. Then how often did you see him after that?
A. Not very often at first but of course I saw more of him towards the last.
Q. Your acquaintance progressed until during the last few years, you were extremely intimate?
A. Yes, sir, the last two or three years he and I were quite intimate.
Q. You had a great number of deals together?
A. Yes, sir.
Q. You drew his will?
A. No, sir.
Q. Well you were consulted about his will?
A. No, sir.

Q. Did I not understand you to say so?
A. No, sir.
Q. You were a lawyer at the time?
A. Yes, sir.
76 Q. How long have you been practicing?
A. Twenty-five years.
Q. What have you been doing besides practicing law during that time?
A. Well like others I have been buying and selling real estate.
Q. You have been conducting an insurance business have you not?
A. No, sir.
Q. You have been acting as lawyer in such cases as you could get and conducted a real estate business?
A. Yes, sir. I have examined titles.
Q. You had a desk in his office did you not?
A. Yes, sir.
Q. When was that?
A. I had a desk in his office a short time before he died.
Q. For some time before he died?
A. I think for about a year.
Q. You had a room at his house and stopped there when you were in town?
A. I stopped there with him now and then when I was in town.
Q. As a matter of fact you had a room at his house that was known as your room?
A. I don't know about that, but I went home with Mr. Florida as he frequently invited me to do when I was in town.
Q. Didn't you make it a practice of stopping at his house every time you came to the City?
A. Not latterly. I went there occasionally and stopped with with him.
Q. For how many years?
A. Well, off and on for a year or two.
Q. In fact you went there very frequently, did you not?
A. Not toward the last as I had a daughter living in town and I stopped with her.
77 Q. Isn't it a fact that you generally came down here on Tuesday and would stay three or four days during which time you stopped with Mr. Florida?
A. I frequently came down on Tuesday and stayed three or four days and during the last year I stayed at his house less than I had done before because I had a daughter living down here and I stayed with her.
Q. You and he had a great many business transactions together?

A. Yes, sir.

Q. How much did Mr. Florida owe you in May, 1892?

A. I do not know, I cannot tell you.

Q. About how much did he owe you in May 1892?

A. It was on the 16th of May, 1892, that I had that contract with him.

Q. That is just what I am getting at, you said you had a settlement on that day. Now, at the time of the settlement how much did you find that he owed you?

A. Well that is what I was trying to tell you.

Q. Well go on and tell us what balance was shown in your favor?

A. Well you see it was this way, we had an account which was called the Richilieu account, that was settled up about that time,—

Q. I don't care about these details Mr. George, I asked you the direct question. What was Mr. Florida owing you when you made this settlement on the 16th day of May, 1892?

A. I can tell you about how much.

Q. Well tell us about how much he was owing you?

A. He was owing me about four thousand dollars.

Q. How much did he owe you in October, 1892,—about how much. Don't go into the details, just give me the amount as near as you can?

A. I do not know.

Q. About how much?

A. I do not know that I could give that.

78 Q. Had his indebtedness to you increased since the settlement in May?

A. Yes, sir.

Q. There was a considerable increase in his indebtedness to you between the 16th of May 1892 and the month of October, 1892?

A. Yes, sir.

Q. Now how much did he owe you in December, 1892?

A. Well I should say twelve thousand dollars would cover it.

Q. How much did he owe you in January, that would be January, 1893?

A. About fifteen or sixteen thousand dollars.

Q. Well how much did he owe you in February?

A. About twenty-two thousand dollars.

Q. How much did he owe you in March, 1893?

A. I do not remember now.

Q. What did he owe you on the 27th day of April, 1893, the day he died?

A. I cannot tell you until things are wound up just how

much. I conveyed him some real estate to help him out, I think probably in February.

Q. Well what was he owing you in the wind up?

A. I cannot tell you the amount.

Q. Well you can tell us approximately?

A. Well accordingly to the value of real estate the way I would put it it would be about thirty-nine thousand dollars.

Q. So his indebtedness had increased from four thousand dollars in May 1892 to thirty-nine thousand dollars, April 27th, 1893?

A. According to the valuation I put on the property.

Q. It had increased that much?

A. Well that is the amount that I think would cover it, you see I had to pay some money out after he died which is included in the thirty-nine thousand dollars.

79 Q. How is that?

A. I had to pay some money out after he died which is included in the thirty-nine thousand dollars which is the amount of my claim against the estate.

Q. I don't understand how that is?

A. He had agreed to take care of certain obligations which he did not do and I had to take care of them.

Q. You had indorsed for him?

A. He had assumed some notes that I expected he would take care of and which he did not and which I had to pay.

Q. And you say that is included in the thirty-nine thousand dollars?

A. Yes, sir.

Q. Now did you take security from him for the four thousand dollars shown to be due you by the settlement of May 16th, 1892?

A. No, sir, I think not.

Q. Did you ask any additional security for the fifteen thousand dollars due in December, 1892?

A. No, sir.

Q. Did you take any security for the twenty-two thousand dollars in February, 1893?

A. No, sir.

Q. Did you take any security at all from him?

A. Well he was constantly getting money from me and kept getting ahead of me all the time.

Q. You did not ask for security in May, 1892?

A. No, sir. I did not think he would go back on me. I never believed it sir.

Q. Now at the time you heard him make these statements in December, 1891 which you spoke of and again in May, 1892

and at other times, you were not afraid that he would carry out his threat to kill himself?

A. I did not think the man would at first.

Q. As a matter of fact you stated that you never took much stock in these threats until February, 1893?

A. Then is when I first became alarmed about his
80 condition.

Q. That is the first time you really thought he might kill himself?

A. Yes, sir.

Q. You yesterday detailed a statement made in several conversations and among them you say that along in December 1891, he said to you that he had made a mistake and that he had been careless and had released a deed of trust or mortgage without having satisfied it, you said that was about December 1891?

A. I think it was about the first of December, 1891?

Q. About the first of December, 1891?

A. Yes, sir.

Q. You spoke of two such transactions?

A. Yes, sir.

Q. And you said that one of them he had fixed all right or could fix all right but that he was afraid that the other might give him trouble?

A. Yes, sir, he said that one of the parties did not seem satisfied to take the money but had threatened to make him trouble.

Q. Did he ask you to help him or to loan him money to fix it up?

A. I do not think that any question was raised as to his ability to fix it up.

Q. The question was not as to his ability to fix it up but whether the party would quietly accept the money or not?

A. Yes, sir.

Q. Now in May 1892, do you know whether he had taken up or fixed up the deed of trust that he spoke about in December, 1891?

A. I cannot say positively as to that but I think that one had been fixed and one was still unadjusted.

Q. And that one was the subject matter of your conversation in May, 1892?

A. Well we spoke of those matters in May 1892, as I have already related.

Q. Well now let us understand each other Mr. George, you say in December, 1891, you had one conversation
81 about these mistakes he had made in satisfying deeds of trust and another conversation in May, 1892, was that another transaction that was the subject matter of your conversation?

A. I think so.

Q. I understand you to testify yesterday that you had a conversation with him in December 1891 and that he said some parties were likely to give him trouble on account of some deeds of trust he had released by mistake, now what I want to know was in this conversation in May 1892 when he spoke of the matter again, did he allude to the same deeds of trust or was this another transaction?

A. My recollection of it is, that he spoke of these matters in December 1891 and when he spoke of it again in May 1892, he had fixed up one of them but was trying to fix up the other and I think he went up to the place where it was to be fixed up.

Q. As a matter of fact didn't you go down to southeast Missouri to sell some land for him?

A. I went down to New Madrid.

Q. That is in southeast Missouri?

A. Yes, sir.

Q. You went down to sell some land to straighten up these matters?

A. I don't know that I went down to sell land for that particular purpose.

Q. Don't you know that you went down there to sell the land for the purpose of straigthening out this trouble he was in?

A. I didn't know beforehand that such was his intentions. I went down there to sell some land for him.

Q. You went down to sell some land in order to get some money for him?

A. Yes, sir.

Q. Did you bring the money back to him?

A. I expressed it back.

Q. Why did you express it back?

A. Because there was no bank at that point.

82 Q. He needed it at once and so you expressed it back to him?

A. No, sir, that was not the point for I think I got back here before the money did.

Q. Then why did you express, why didn't you bring it with you?

A. I merely expressed it as a matter of protection as I did not want to risk traveling with that sum of money.

Q. Isn't it a fact that he had to have a certain amount of money by a certain time and that you had gone down there to get it for him?

A. No, I have no recollection that there was any immediate hurry for that money, but he wanted to sell that property and I went down and sold it for him.

Q. What did you say to him when he told you he had made the mistake about these deeds of trust?

A. I told him I would pay it off if there was a mistake about it.

Q. You told him that you would pay it off if [their] was a mistake about it?

A. No, sir, I did not state that.

Q. What did you say?

A. I said I, meaing if I was in his place, that I would pay it off, if they were going to give any trouble about it.

Q. Then, it was not a question between you as to whether he could get the money or not to pay it off but simply a question of paying it off and getting rid of it?

A. Yes, sir. I never doubted his ability to pay it off.

Q. You assumed him to be a man of considerable means?

A. Yes, sir, I considered him to be a man of means.

Q. Your advice to him was to recognize the mistake he had made, pay it off and settle up?

A. Yes, sir.

Q. How did you go down there,—in what capacity when you sold this land, I mean?

A. I went down there as a friend.

83 Q. You didn't go as his attorney then?

A. No, sir.

Q. Did you charge him for going?

A. I supposed I charged him a commission. I don't recollect what he paid me.

Q. You charged him for going down there and selling the land?

A. Yes, sir.

Q. Had you charged him for services of this sort before that time?

A. I don't know about that.

Q. Had you or had you not?

A. I think I had.

Q. Don't you know that a large part of the four thousand dollars which you claimed he was owing you in May 1892 was for charges against him, as his attorney or services of some sort?

A. No, sir.

Q. Some of it?

A. No, sir, none of it.

Q. Are you sure of that?

A. Yes, sir, he always paid me these things.

Q. You made your charges against him and told him how much he was owing you and he paid you, recognizing his obligation to you?

A. I didn't have to tell him.

Q. How did he find out how much he was owing you for such services?

A. Well he generally knew about what such services were worth and would bring me the money and say I will give this to you, handing me the money or check.

Q. You always took what he gave you without any discussion?

A. Certainly sir, he always paid me whatever the services were worth, there was no room for discussion.

Q. In fact he was a man who was extremely friendly?

A. Yes, sir, a very liberal man.

Q. He always paid you what you thought you ought to have?

A. Yes, sir, he always paid me liberally and he and I never had a word in the world.

84 Q. He paid you liberally on all transactions?

A. Yes, sir.

Q. You said in the spring of 1892, and I think you fixed the date about the middle of May, Mr. Florida asked you to find out from your son-in-law Mr. Dickson what insurance companies issued policies without the suicide clause?

A. Yes, sir.

Q. And you fixed the date of that conversation at about the time he spoke of these other transactions?

A. Yes, sir, and I declined to do it.

Q. It didn't concern you and you did not at the time consider it as being a serious matter on his part at all?

A. I scolded him and told him I would not do it.

Q. You didn't pay any attention to it?

A. No, sir, I told him I would not do it.

Q. You have seen the policies in this case here?

A. Yes, sir, I think I have.

Q. These policies have what is called a suicide clause?

A. I do not remember of reading all of the policy, I remember though that I went over them and that some of them had the suicide clause.

Q. If it was his purpose to take out policies without the suicide clause, he certainly failed utterly in his trial with the Aetna Company?

A. Yes, sir.

Q. For all of these policies do contain the suicide clause?

A. Yes, sir.

Q. You said yesterday in speaking about this matter that you had a settlement with him about the middle of May 1892 and you found that you were his creditor to the extent of about four thousand dollars?

A. I cannot give you the exact amount but that is about it.

Q. About four thousand dollars?

A. Yes, sir, the books will show the exact amount.

85 Mr. Jones the administrator, has the books and you will find the settlement entered there.

Q. You made a settlement which recognizes you as a creditor to the extent of four thousand dollars?

A. About that.

Q. Was that for cash advanced?

A. Mr. Florida and I did not do much cash business but we had a great many deals and that was the net result in my favor at that time.

Q. You had a great many deals during the time you knew him in relation to matters and things not involving cash transactions?

A. Yes, sir.

Q. In fact none of it was cash?

A. Yes, he would pay some times or I would pay on matters that we had together and in doing that the account remained unadjusted until that time.

Q. Those transactions were not included in the four thousand dollars?

A. While it was not really cash paid to him, I had paid out in cash and property that much more than [we] had.

Q. Well that was not part of the four thousand dollars?

A. I cannot say it was a part of the four thousand dollars except to say that the net result was that this settlement was four thousand dollars in my favor.

Q. I think you stated yesterday that you had three conversations with him relating to some fifteen thousand dollars life insurance that he was carrying in the Provident Savings Association and that he was going to allow that fifteen thousand dollars of insurance to lapse. I believe you said that was in August?

A. I don't believe I said it was in August.

Q. That is my recollection of your testimony of yesterday?

A. I said it was in warm weather, I think it was later than August.

Q. So you are not positive about the matter?

A. I am not positive as to the exact date.

86 Q. Well I want to know now when this conversation occurred with reference to his allowing the fifteen thousand dollars of insurance in the Provident Association to lapse?

A. I told you I could not remember the exact date.

Q. Give us the month?

A. I [di] not know that I could give you the exact month.

Q. Tell us about when it was?

A. I think it might have been as late as the latter part of the fall of 1892. I know the weather was warm yet.

Q. Can't you get it any nearer than that?

A. Well, no I don't see that I can.

Q. It may have been August or it may have been September?

A. I cannot fix the date.

Q. Would you be certain that it would be in one or the other of those two months?

A. I would not like to state that.

Q. Was it in August, September, October or November?

A. It was somewhere along in there.

Q. All you can say then is that it was somewhere along in August, September, October or November?

A. Yes, sir.

Q. You say it was warm weather?

A. Yes, sir.

Q. And you are certain it was between August and November?

A. Yes, sir.

Q. Might it not have been December?

A. I do not think it was late as December.

Q. You are sure of that?

A. Yes, sir, for I remember it was warm-like weather.

Q. November is sometimes quite warm here is it not?

A. Yes, sir.

Q. The best you can do is to fix it as being one of those four months?

87 A. Yes, sir.

Q. Did he allow the fifteen thousand dollars of insurance that he had in the Provident Life Insurance Association to lapse?

A. I cannot say as to that of my own personal knowledge, although I believe so.

Q. Didn't he tell you so?

A. I have no recollection of his doing so.

Q. Haven't you heard since that he did allow it to lapse?

A. I believe that has been stated.

Q. That he did allow the fifteen thousand dollars of insurance between the time of this conversation and the time of his death?

A. I don't know about that, he may have failed to pay up before his conversation for all I know.

Q. Then let me ask you, did he say, that he was going to allow it to lapse, or that he had allowed it to lapse?

A. I would not be positive as to that, but I think or rather the impression I gathered was that he intended to allow it to lapse.

Q. Did he state any reason for allowing it to lapse?

A. He said he was not satisfied with the company and I think he even went so far as to say that he did not regard it as a very strong company.

Q. The Company was solvent at that time was it not?

A. I do not know anything about that.

Q. You never heard its solvency questioned?

A. No, sir, I don't know anything about it.

Q. Did he give you to understand in that conversation that the solvency of the company was the question in his mind?

A. Well my impression is that he spoke about the company as not being as strong as he would like or something of that kind.

Q. Well, what else did he say?

A. He said that he wanted his insurance in compan-
88 ies where his wife would get the money.

Q. Did he say that this company had failed to pay anything?

A. No, sir, there was nothing said about that, as I don't know anything about the company.

Q. You detailed a conversation that you had with him in December, 1892, in which he stated that he was going to take out some life insurance in order to boom himself with certain fellows?

A. Yes, sir, that is what he said.

Q. And among these "fellows" were Judge Christian?

A. I didn't say that.

Q. Didn't you state yesterday that he said that he was going to take out to boom himself with certain fellows with whom he was dealing mentioning Judge Christian and Mr. Wonderly?

A. I do not remember that he stated the names at that time but I knew who he referred to.

Q. Didn't you say yesterday that he told you that he was going to take out some insurance for his estate as distinguished from insurance for the benefit of his wife in order to boom himself with certain men, namely Christian and Wonderly?

A. I don't think that was the conversation.

Q. Are you certain that was not stated by you yesterday?

A. If I stated that yesterday I am mistaken.

Q. Do you say that you did not say that yesterday?

A. I did not wish to be understood as saying that. I may have been misunderstood.

Mr. Estes: Let him state what was said at the time Mr. Florida said he wanted to take out more insurance?

A. He said he wanted to take out more insurance and he could fix up with Mr. Christian and Mr. Wonderly about helping him through.

Judge Adams: Now when was that conversation in which he stated he wanted to take out some more insurance
89 in order to get Mr. Christian and Mr. Wonderly to help him through,—when did you have the conversation on that subject?

A. It was about the time he was making arrangements with them.

Q. When was that?

A. I think it was some time in January.

Q. You have changed it now from December to January?

A. No, sir, I have not.

Q. When did it occur?

A. That part of the conversation occurred in January.

Q. You say you made a contract with Christian and Wonderly sometime in January? Did you hear him say what that contract was?

A. Yes, sir.

Q. Isn't it a fact that about that time he was in financial straits and was going to turn his property over to Judge Christian who would take hold of the matter for him and try to save something from his equities?

A. That was it exactly.

Q. Didn't you think that Judge Christian or some one familiar with his affairs had estimated his equities to be worth one hundred and twenty-five thousand dollars?

A. There was an estimate made but I do not know it was made by Judge Christian and I do not think it was.

Q. Anyhow it was understood at the time that is along in January 1893, that the estate if properly managed ought to net Mr. Florida about one hundred and twenty-five thousand dollars?

A. Yes, sir, that was my understanding. And I think those figures were made up by Mr. Jones or some one else connected with the Trust Company.

Q. Mr. George, that was your understanding was it not?

A. Yes, sir.

90 Q. Did you make an estimate yourself?

A. No, sir, I did not but I looked over the figures and from my knowledge of the matter I thought the estimate was fair and reasonable and I think Judge Christian was of the same opinion.

Q. That was in January, 1893?

A. Yes, sir.

Q. You heard him state at the time did you not that he hoped to tide over his affairs and get Judge Christian to advance thirty or forty thousand dollars and he would transfer his property to Mr. Christian and Mr. Wonderly and

try to save something from his equities and if properly managed the equities ought to net him one hundred and twenty-five thousand dollars?

A. That is substantially what I understood at the time.

Q. He simply wanted to be tided over and they were to advance him this money and take security for it?

A. Yes, sir.

Q. Now at that time he was owing you money and you did not think it necessary to demand any security for yourself?

A. I did not ask any.

Q. But as matter of fact you stated you conveyed him some property to help him out?

A. Yes, sir.

Q. As a matter of fact you regarded Mr. Florida as a prosperous man made of the material necessary to bring success?

A. Yes, sir.

Q. A very energetic man?

A. Yes, sir.

Q. A man thoroughly imbued with the idea that the business in this community was bound to increase and that values would be going up all the time?

A. Yes, sir.

Q. As a matter of fact the year 1892, was what might be called a boom year in real estate in St. Louis?

A. Yes, sir.

Q. Mr. Florida was largely engaged in that business himself?

A. Yes, sir.

91 Q. He had engineered many successful deals that had brought him considerable money?

A. Yes, sir.

Q. He had bought and sold a great deal of real estate during those two years?

A. Yes, sir.

Q. He was a man of a bouyant hopeful nature?

A. Part of the time.

Q. In fact was he not most of the time?

A. Well I might say that he was.

Q. Now then Mr. Florida lost a little son along December '92, did he not?

A. I think it was along in December, probably the latter part of December.

Q. A very promising boy?

A. Yes, sir.

Q. About eleven years of age?

A. Yes, sir.

Q. Mr. Florida was extremely fond of the boy?

Mr. Estes: I don't see that this has anything to do with the case.

The Court: It is admissible.

Judge Adams: He was particularly fond of the child and was very much depressed after the child died?

A. Yes, sir.

Q. Did he have any other boys left do you know?

A. I don't know about that but I think there were several girls in the family.

Q. How many?

A. Three girls I think,—yes and one boy besides the boy that died. It strikes me that he has two boys and three girls left.

Q. Then five children living?

A. I think so.

Q. Don't you know so?

A. I was trying to get up the number by remembering their names.

Q. You know there are five?

A. Yes, sir.

Q. This was the oldest boy?

A. I believe so.

92 Q. There was a girl some two or three years older?

A. ———

Q. You detailed another conversation in which you stated that in January, 1893, Mr. Florida asked you to go out to his house to see his wife and look over some insurance policies she had?

A. That is substantially [is] what was said.

Q. To look at the policies in which she was the beneficiary, was the object of your visit to the house?

A. I had just went out there at his request.

Q. You went at his request to look at the insurance policies that were for Mrs. Florida's benefit as distinguished from the insurance policies that were for the benefit of his estate, as he termed it?

A. Yes, sir, that was the object of the visit.

Q. Did you go?

A. Yes, sir.

Q. Did you see her about the policies?

A. Yes, sir.

Q. Did you talk about them?

A. Yes, sir.

Q. What did you go for?

A. Well it was just as I told you yesterday that Mr. Florida wanted me to go out and look at the policies or rather he stated his wife wanted me to come out.

Q. Mr. Florida said to you that Mrs. Florida had confidence in your judgment and she wanted you to look at the policies and tell her how they stood?

A. Yes, sir, that is substantially what he said. He said Lill will believe you if you tell her the premiums were paid and she has great confidence in you.

Q. Did you tell her that?

A. I don't think I did. I don't think the question of the payment of the premium was mentioned.

Q. You never discussed that matter with her at all?

A. Not that I recall.

Q. Mr. George was not arrested in Illinois on account of these mistakes was he?

A. How is that?

Q. Mr. George was not arrested in Illinois on ac-
93 count of these mistakes?

A. I was never arrested at all.

Q. I beg your pardon, I meant Mr. Florida?

A. I thought you must be mistaken in that name.

Q. Mr. Florida was not arrested in Illinois on account of any of these mistakes?

A. No, sir, I think not.

Q. What conversation was it you stated this morning you had with Mr. Florida in which he stated that he was going to leave the country?

A. How is that?

Q. A little while ago you stated that you had a conversation with him in which he stated that he was going to leave the country. When did that conversation take place?

A. I was trying to fix the date. I think it was along in January.

Q. He said he contemplated leaving the country?

A. Yes, sir.

Q. Did he tell you where he was going?

A. No, sir, he did not.

Q. Did he ask you anything about the extradition laws of the different countries?

A. He asked me to find out about it but I did not do it.

Q. He wanted you to find out about the extradition laws of the different countries?

A. Yes, he mentioned particularly Germany and Canada.

Q. That you say was in January?

A. I will fix it as being along in there.

Q. Did you suggest Germany as being the better place, on account of the extradition laws?

A. No, sir, I had more sense than that.

Q. Did you give him any information on the subject?

A. No, sir, I did not.

Q. What did you say to him?

94 A. I told him he had better give up such foolishness.

Q. Do you know whether he sought other information on the subject?

A. I do not.

Q. You had a number of transactions yourself with Mr. Florida, did you not?

A. Yes, sir.

Q. You and he were interested in a piece of property at Ninth and Market Street here in St. Louis, were you not?

A. Yes, sir.

Q. Now I want to show you a deed bearing date June 28th, 1892, between Gilbert J. George and wife parties of the first part and John R. Christian and Charles P. Wonderly parties of the second part. Please look at it and see if you recognize those signatures?

A. Yes, sir.

Q. Now I call particular attention to the names John R. Christian and Charles P. Wonderly and will ask you to examine that deed and state whether or not something has not been erased?

A. Yes, sir, I think it has.

Q. It looks like some name had been erased before the names of Christian and Wonderly were put there?

A. Yes, sir, it looks that way. Let me look at it again.

Q. What name had been in there before that time?

A. I cannot tell you that.

Q. Wasn't the name of Calkins in there?

A. It looks like some name had been in there, I suppose it was but I am not certain about it being Calkins.

Q. What is Calkns first name?

A. I don't know whether it is John or not.

Q. Do you know his initials?

A. I think his initials are J. G.

Q. J. G. Calkins?

A. Yes, sir.

95 Q. Do you know the first name?

A. I don't know whether it is John or Jim.

Q. It was the intention in that deed to convey that property to Mr. Calkins?

A. Yes, sir.

Q. Don't you know as a matter of fact that the deed was made to Mr. Calkins and that he made a mortgage on it for fourteen thousand dollars and afterwards his name was erased and afterwards a second mortgage was made for $8,000. to H. M. Noel?

A. I will explain that matter to you.

Q. Well what have you to say?

A. There was a mortgage of eight thousand dollars on that property.

Q. Made by whom to whom?

A. Made by Mr. Calkins.

Q. What became of that mortgage?

A. I never knew what became of that mortgage until I found that Mr. Noel had the note. That is one of the things I had to pay.

Q. After that mortgage had been given by Mr. Calkins the grantee in this deed, didn't you have that transaction with Christian and Wonderly, by which, and for a consideration you would turn over your interest in this property on Ninth and Market to them?

A. No, sir.

Q. Didn't you say on that occasion at the time of this interview in January when they were talking of trying to get Mr. Florida's affairs in shape that you would turn over your interest in this Ninth and Market street property to help Mr. Florida?

A. Yes, sir.

Q. Then didn't you take this deed and after erasing the name of Mr. Calkins insert the name of John R. Christian and Charles P. Wonderly?

A. No, sir.

Q. Who did do it?

A. I think it was done by one of the clerks.

96 Q. Didn't you tell John R. McDonald to do it. After that mortgage had been given didn't you tell John R. McDonald to erase the name of J. G. Calkins and insert the name of John R. Christian and Charles P. Wonderly in order to convey the title to them in order to satisfy your obligation?

A. I think you had better let me explain it.

Q. I want you to answer my question?

A. Well you will have to let me explain. In the first place Mr. Gleason was interested in this property and he bought the interest of Mr. Florida in it.

Q. You are avoiding my question. I care not what interest Gleason had in this property. Is it not a fact that after that property had been deeded to J. G. Calkins,—Calkins executed a mortgage for eight thousand dollars and then the name of J. C. Calkins was erased and the names of John R. Christian and Charles P. Wonderly were inserted?

A. That was done under a misunderstanding.

Q. It was done?

A. I say it was done under a misunderstanding.

Q. Don't you know that that deed was delivered to Mr. Calkins?

A. I never knew that deed had been delivered to Mr. Calkins.

Q. As a matter of fact wasn't that deed delivered to Calkins and didn't he afterwards execute a mortgage for eight thousand dollars?

A. I have since learned that he did but I did not know it at the time that that deed was erased, I thought the deed was in the safe.

Q. Didn't you know at the time that the deed for eight thousand dollars had been delivered?

A. No, sir, I did not.

Q. Didn't you know that Noel had the note?

A. No, sir, I did not.

Q. It turned out afterwards that he had it?

A. Yes, sir.

97 Q. Nevertheless you caused the name of J. G. Calkins to be erased and the names of Christian and Wonderly to be inserted?

A. I did not know the deed of trust was out. I did not know it had been delivered, I thought it was in the safe.

Q. As a matter of fact that deed of trust had been delivered when you had that name erased?

A. I supposed the deed of trust was in the safe or I would have never allowed that name to have been erased.

Mr. Estes: I don't see where this is material.

The Court: I think it is proper on cross-examination.

Q. You say that you did not know the note and deed of trust had been executed by Calkins at the time the erasure was made?

A. I did not know they had been delivered. I thought they were still in the safe.

Q. You did know of their existence?

A. I thought they were in the safe and had never been delivered.

Q. You did know of their existence?

A. I knew of their existence but thought they were in the safe.

Q. As a matter of fact didn't you endorse the eight thousand dollar note which Calkins executed when the title stood in his name?

A. That note was left in my possession and was put in Florida's safe.

Q. You and Florida had a safe together?

A. No, sir, it was Florida's safe and I just kept some papers in there.

Q. Well the net result of the transaction was that Mr. Noel lost the eight thousand dollars he gave for that note?

A. No, sir.

[Q.] Mr. Estes: I think this is all objectionable.

Judge Adams: I want to show the character of this witness and show the credibility to which he is entitled.

98 The Court: I think you have gone far enough into the matter, Judge Adams.

Judge Adams: I am perfectly willing to drop it there.

Q. Mr. George when did Mr. Florida die?

A. I think on the 27th of April, 1893.

Q. When did you come to St. Louis for the first time after his death?

A. I do not know,—probably two weeks. It must have been along towards the middle of May.

Q. Did you go out to the West End Hotel when you were here to Judge Christian's room?

A. I don't remember being there.

Q. Judge Christian roomed at the West End Hotel in St. Louis, now didn't you go out there on or about the 15th of May, 1893, to see him?

A. I do not remember whether it was my first visit or not. I remember going out to see him.

Q. Didn't you go out there one morning and when he left to go down town to his office, you remained there until he returned at night?

A. I remember of seeing him in the evening but I did not remain there during the day.

Q. Anyhow you were there when he got home at night?

A. I think I was.

Q. Don't you know you were?

A. I don't know that I was but I remember of seeing him.

Q. Whether you were there at the moment of his return or not you are not willing to state, but you did see him that night?

A. I saw him, yes, sir.

Q. Didn't you have a talk with him in regard to your claim against the estate of Mr. Florida?

A. I do not remember.

Q. Did you not then tell Judge Christian on that occasion about the middle of May, 1893, the first time you came down here after the death of Mr. Florida, that Mrs. Florida

99 has got to pay you eighteen thousand dollars and if she did not pay you eighteen thousand dollars out of her own resources, independent of the estate, you would testify against her in any suit she might bring on any of the policies of insurance in which she was the beneficiary?

A. No, sir.

Q. Didn't you tell him anything of that kind?

A. I will explain to you just what I said to Judge Christian. I told him what Mr. Florida had said Mrs. Florida would do, that is she would protect me.

Q. So you did have a talk with Judge Christian about Mrs. Florida protecting you?

A. I told him what Mr. Florida said what Mrs. Florida would do and I had no doubt but that she would protect me.

Q. And didn't you tell him that in case Mrs. Florida did not protect you, you would testify against her in any case she might bring on account of these policies of insurance?

A. No, sir.

Q. Didn't you tell him you would go and see her that night?

A. I do not remember about that.

Q. Did you go and see her that night?

A. I saw Mrs. Florida the first time I was down but I don't know whether it was that night or not.

Q. You went to see her that night after seeing Judge Christian?

A. I would not be positive about it for I stayed down here two or three days.

Q. You wouldn't be postive whether it was that first night or not?

A. No, sir.

Q. Didn't you see her and demand of her that she pay to you a portion of the debt you claimed Mr. Florida was owing you?

A. I never demanded it.

Q. What did you say about it?

100 A. I did not know at the time how much he was owing me but we talked about the matter but there was no question of my demanding it from her.

Q. Didn't you have a talk with Judge Christian and tell him that Mr. Florida said what she would do and didn't you go to see her and tell her what Mr. Florida had said?

A. Not that night.

Q. Didn't you see her pursuant to the arrangement you made with Judge Christian, and didn't you ask her to pay you the debt due you?

A. I didn't have to ask that.

Q. Did you do it?

A. No, sir.

Q. What did you tell Judge Christian?

A. I think I told him that I would go and see Mrs. Florida but I did not say when.

Q. And didn't you tell Judge Christian that if she did not pay a portion of this debt you would testify against her in these suits?

A. No, sir, I deny that most emphatically. I deny before God and man that I said anything of the kind.

Q. Didn't you go back after seeing Mrs. Florida to see Judge Christian who was then the first or second door above Mrs. Florida's residence at the house of Mr. Culver?

A. I think I saw Judge Christian at Mr. Culver's house.

Q. That same night?

A. I don't know whether it was that night or the next.

Q. Isn't it a fact that you went right from Mrs. Florida's house to Mr. Culver's where Judge Christian was at the time?

A. I don't know whether I went there from Mrs. Florida or went there from down town.

Q. You did see Judge Christian at Mr. Culver's?

A. Yes, sir.

Q. Didn't you repeat to him what Mrs. Florida had said.

A. I don't remember about that.

Q. Mrs. Florida never paid you anything on account
101 of your claim against the estate of Mr. Florida?

A. She has paid me some money.

Q. On what account?

A. I paid three hundred and fifty dollars or about that amount on account of some insurance and she paid me that money back.

Q. She hasn't paid any part of the debt that you hold against Mr. Florida's estate?

A. Only to that extent. I let Mr. Florida have that money and she paid it back to me.

Q. She refunded you the money the three hundred and fifty dollars?

A. Yes, sir.

Re-Direct Examination.

By Mr. Estes:

Q. You said that when you went to Mr. Christian's office with Mr. Florida at the time that Mr. Florida turned over his property in order to try and tide over his troubles, that a statement was there which had been prepared by the Secretary of the Mississippi Valley Trust Company. Please state again what you said about that?

A. There was a statement which had been figured out by some one connected with the Mississippi Valley Trust Company showing the equities in Mr. Florida's property to be worth about one hundred and twenty-five thousand dollars.

Q. You said that Mr. Florida thought that that was about right?

A. I think it was agreed by those there that it was about right.

Q. And Judge Christian was going to take hold of the property and try and carry it through to save the equities for Mr. Florida?

A. Yes, sir.

Q. I believe you stated that Mr. Florida made a statement of all his debts which were included in the written statement they had there?

A. I don't know about that. What I meant to say
102 was that I believe the statement to be about correct and my understanding was that he was to turn over his property to these gentlemen and they were to advance money to help tide him over.

Q. When he turned this property over, did you know anything about these fraudulent transactions and were they taken into consideration in figuring out his equities?

A. I guess there must have been a hundred of those and they were not considered at the time.

Judge Adams: My attention was called away for just a moment and I did not hear the question in time to interpose an objection, I now move to strike it out.

The Court: The motion to strike out will be sustained.

To which ruling of the Court the defendant then and there excepted at the time.

William A. Ellis, being called and sworn testified as follows on the part of the defendant.

Re-Direct Examination

By Mr. Estes.

Q. State your full name?

A. William A. Ellis.

Q. What is you business?

A. I am the General Manager of the Merchants Life Association.

Q. Did Mr. Florida have a policy in your Company?

A. Yes, sir.

Q. I will ask you to look at this paper and state to the Court and the jury what it is? (handing witness a paper)

A. This is the original application made by Mr. Florida for insurance in our Company.

Mr. Estes: I will offer this application in evidence if the Court please. It bears date November 10th, 1890.

103 (Application of Alonzo K. Florida in The Merchants Life Ass'n.)

No. 388.

Wm. A. Ellis.

Signature of Agent: H. L. Rogers.

Application for Insurance

In

The Merchants' Life Association of the United States.

Desiring a policy of Life Insurance in the Merchants' Life Association of the United States, I make the following answers as the only basis of my application:

Questions to be Answered by the Applicant.

Full and explicit answers to each question will be required in all cases.

* * * * * * * * *

	Living.		Dead.		How long sick.
	Age.	Health.	Age.	Specific Cause of Death.	
Father.....	.....	.....	40	Chronic Diarrhoea (contracted in army).	Don't Know.
Mother.....	.....	.....	45	Some abdominal tumor.	.....

* * * * * * * * * * * *

104 Judge Adams: I object to it on the ground that it cannot be material in this case. It has no bearing whatsoever on the issues in the case now before the court.

Mr. Estes: It has a bearing upon the point we make as to the misrepresentation as to the cause of the death of the father and mother and their respective ages at the time.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

Mr. Estes: Let the record show that I offer in evidence the application signed by Alonzo K. Florida for insurance in the Merchants Life Association dated November 10th, 1890.

The purpose of this offer is to show that in answer to the question as to what was the cause of the death of the father, his answer is chronic diarrhoea and he gives the age of the father at the time of his death as forty years. In answer to the question as to the age of the mother at the time of her

death he gives it as forty-five years and as to the cause of her death he answers abdominal tumor.

105 Nathan Kauffman, being called and sworn testified on the part of the defendant as follows:

Direct-Examination

By Mr. Estes.

Q. State your full name?
A. Nathan Kaufmann.
Q. What is your business?
A. I am in the life insurance business.
Q. What Company do you represent?
A. I represent the Connecticut Mutual of Hartford, Connecticut.
Q. What position do you hold with respect to that Company?
A. I am the General Agent for St. Louis.
Q. I now show you a paper and will get you to state to the court and jury what it is?
A. It is an application for insurance in the Connecticut Mutual made by Mr. Florida and dated July 11th, 1892.

Mr. Estes: I will offer the application if the Court please.

Objected to as being immaterial and irrelevant.

The Court: Do you want to offer the application as a whole or with reference to any particular part?

Mr. Estes: I want to offer it with reference to the cause of the death of the father and mother and their ages at the time of death.

Judge Adams: It is too remote and I do not see the connection, still I will withdraw my objections and let it go in.

Mr. Estes: The application reads as follows:

106 Every question must be fully answered above the warranty clause, every name legibly written, and every needed signature properly attached and witnessed. Every incomplete application will be returned.

Application for Insurance in The Connecticut Mutual Life Insurance Company, of Hartford, Connecticut, which is the basis of and a part of the Contract of Insurance.

* * * * * * * * *

Father, [#]. Effects of gunshot wound in army. Good.
Mother, 32. Effects of Childbirth. Few days. Good.

* * * * * * * * *

107 Mr. Estes (resuming): Was a policy isued under that application, Mr. Kauffman?

A. Yes, sir.

Q. I now show you another paper and will ask you what it is?

A. That is another applicaton signed by Mr. Florida for a policy of insurance in our Company.

Mr Estes: I will offer that application and will call especial attention to the fact that it is dated April 20th, 1893, but seven days before Mr. Florida's death.

Judge Adams: We object to it as not being germain to any of the issues as raised by the pleadings in this case.

The Court: Was a policy issued under that application?

A. Yes, sir.

The Court: What is the object in offering that application?

Mr. Estes: I want to show misrepresentation in regard to the amount of insurance already carried by Mr. Florida at the time he made this application.

The Court: I will overrule the objection.

Plaintiff's counsel then and there excepted to the ruling of the Court at the time.

Mr. Estes: The application reads as follows:

108 Every question must be fully answered above the warranty clause, every name legibly written, and every needed signature properly attached and witnessed. Every incomplete application will be returned.

Application for Insurance in The Connecticut Mutual Life Insurance Company, of Hartford, Connecticut, which is the basis of and a part of the Contract of Insurance.

* * * * * * * * *

Father, 40. Effects of wound in Mexican war. Good.
Mother, 32. Effects of Childbirth. Few days. Good.

* * * * * * * * *

109 Cross-Examination

By Judge Adams:

Q. Did you solicit the insurance that was issued under that application?

A. I assisted.

Q. How many of you handled it?
A. Two of us.
Q. Yourself and who else?
A. Myself and one of the solicitors named Johnson.
Q. How many times did you call on Mr. Florida before he made that application?
A. I only saw him once.
Q. Did he come to your office?
A. No, sir.
Q. Not even to make out the application?
A. No, sir.
Q. When did you or any one in your employ first call on Mr. Florida in regard to the insurance that was afterwards issued under that application?
A. I do not know what time he first saw him. I know that Mr. Johnson reported that Mr. Florida had promised to take a policy in our company and on the date that application was signed I went to see Mr. Florida myself with the result that he signed the application and took a policy in our company.
Q. How many times had Mr. Florida been seen by your representatives with a view of getting him to take out a policy in your company?
A. He had been seen a number of times during the two years prior to the date of that application.
Q. About how many times had you seen him?
A. I cannot say exactly, I suppose ten times.
Q. Do you know how many times Mr. Johnson called on him in regard to taking out a policy in your company?
A. No, sir, I do not.
Q. He visited him as often as you did?
A. More than I did.
Q. Now take the next policy. How long had you or your representatives been soliciting that insurance from Mr. Florida?
A. I do not know how long. I know that Mr. Johnson was soliciting insurance from one of Mr. Florida's clerks and went into the office one morning—
110
Q. I do not care for that detail. Can you state how long you had been trying to get Mr. Florida to take that last insurance?
A. No, sir, I cannot state exactly.
Q. Mr. Florida never came into your office for that insurance?
A. No, sir.
Q. He did not seek it?
A. No, sir.
Q. On the contrary the representative of your company sought him out and got him to take that insurance?
A. Yes, sir.

Re-Direct Examination

By Mr. Estes:

Q. What was the premium paid on this policy Mr. Kaufmann?
A. My recollection is that the premium paid was $330.00.
Q. Was it paid annually?
A. No, sir, I think it was paid quarterly in sums of about ninety dollars.
Q. Do you know how long prior to his death that policy was delivered to him?

Objected to as immaterial.

Objection overruled.

Plaintiff's counsel then and there excepted to the ruling of the Court at the time.

A. The day of his death.

Re-Cross-Examination

By Judge Adams.

Q. Is it a common practice with your company to issue policies where the premium may be paid in installments quarterly or semi-annually instead of annually?
A. Yes, sir.
Q. The fact that this premium was payable quarterly was nothing unusual?
A. No, sir.

Mr. Estes: Do you know how he paid the premium
111 on the other policy?

A. I think it was paid annually.

The Court: Doesn't the application state that?

A. In this case the premium was not paid until we got the policy from the company and delivered it to Mr. Florida.
Q. Then he paid a year's premium?
A. Yes, sir.
Q. What was the amount of the policy?
A. The application gives the amount as $10,000.

James S. Gross, being called and sworn testified on the part of the defendant as follows:

Direct-Examination

By Mr. Estes.

Q. State your full name?
A. James S. Gross.

Q. What is your business?

A. I am the General Agent of the Massachusetts Mutual Life Insurance Company.

Q. Did Alonzo K. Florida take out a policy of insurance in your company?

A. Yes, sir.

Q. When was it taken out?

A. The application is dated the 7th day of June, 1892.

Q. For what amount?

A. $10,000.

Q. A policy was issued on the application?

A. Yes, sir.

Q. At what time?

A. I do not remember the exact date of the policy. It was only a few days later than the application.

Q. Have you that original application?

A. No, sir.

Q. Where is it?

A. It is at the Home Office in Springfield, Massachusetts.

Q. The application is signed by Mr. Florida and forwarded to the home office Springfield, Mass., where it since has been kept on file?

A. Yes, sir.

112 Cross-Examination

By Judge Adams.

Q. You are the general agent of the company you say?

A. Yes, sir.

Q. How long have you been such general agent in St. Louis?

A. I took charge of this office in February, 1892.

Q. Did you personally solicit this insurance?

A. Yes, sir, in connection with an agent of mine.

Q. Did he come to your office at any time to seek this insurance?

A. No, sir.

Q. Where did you first see him?

A. At his office.

Q. About when did you have the first interview with him on the subject of taking out insurance?

A. Well that application was signed on the 7th of June and my best recollection would be that it was six weeks or two months prior to that.

Q. How many times did you see him before the application was signed?

A. Eight or ten times I suppose.

Q. What was the result of your first interview with him?

A. The result of the first interview was to leave the impression on my mind that he was inclined to take out the insurance, and then of course we visited him quite often until the application was signed.

Q. He was not a very easy mark for taking out insurance?

A. No, sir.

Q. You had to work with him just like you did anyone else whom you wanted to insure?

A. Yes, sir.

Q. He never sought this insurance and never came to your office to see about it?

A. No, sir, never.

Q. It was some little time from the time you first commenced to negotiate with him until the application was signed?

A. Yes, sir.

113 Q. He did not manifest any anxiety to have it issued quickly?

A. No, sir.

Mr. Estes: I want to read the material parts of the application dated July 14th, 1892.

In answer to the question as to the age of his mother, he answered "Thirty-two years." Cause of death "Child-birth." In answer to the question as to the age of his father he gives it as forty years. In answer to the question as to what company issued policies on his life his answer is the Northwestern Company, $750. Mutual Life of New York, $25,000. The Aetna $5,000. The Massachusetts Mutual $10,000.

In answer to the questions in the next application he makes the same answer as to the father and mother that the mother was thirty-two years of age and died of child-birth and the father was forty years of age and died from the effect of a wound received in the Mexican War. In answer to the question as to the amount of insurance carried he gives it as the Northwestern $750. Mutual Life of New York $25,000. The Aetna Life $5000. Massachusetts Mutual $10,000. Connecticut Mutual $10,000.

T. F. Terry, being called and sworn testified on the part of the defendant as follows:

Direct-Examination

By Mr. Estes.

Q. State your full name?

A. T. F. Terry.

Q. What is your business Mr. Terry?

A. I am in the real estate business.

Q. Did you know Mr. Florida?
A. I did.
Q. Do you remember about the time a real estate
114 dealer in this City by the name of Jeptha K. Simpson committed suicide?
A. Yes, sir.
Q. Did you have any conversation with Mr. Florida in relation to Mr. Simpson's death?
A. Not with Mr. Florida.
Q. Was Mr. Florida with you when that matter was discussed?
A. Yes, sir.
Q. Where was it?
A. The morning after Mr. Simpson killed himself I was going down to the Fourth National Bank,—

Judge Adams: When was that Mr. Terry?

A. I would not be certain about that but I think it was in 1892,—probably May or June, 1892.

Mr. Estes: Go on?

Judge Adams: Is he relating a conversation with Mr. Florida?

Mr. Estes: We will show Mr. Florida's connection with the matter.

Q. State what was said Mr. Terry?
A. I was going down to the Fourth National Bank with a gentleman and the question was asked have you heard that Jeptha Simpson killed himself last night,—the gentleman who was with me remarked that he had made a horrible mess of it and said that he ought to have taken Prussic Acid and it would have killed him quick. And Mr. Florida asked the gentleman [is] Prussic Acid would kill a person quick and the gentleman replied that Prussic Acid would kill him in a minute.
Q. The gentleman remarked that Mr. Simpson had made a mess of it and that if he had taken Prussic Acid, it would have killed him in a minute?
A. Yes, sir.
Q. Then Mr. Florida asked if Prussic Acid would kill a person and the gentleman replied that it would kill him in a minute?
A. Yes, sir.

115 (Cross-examination waived.)

B. F. Hammett, being called and sworn testified on the part of the defendant as follows:

Direct-Examination

By Mr. Estes.

Q. [Atate] your full name?
A. B. F. Hammett.
Q. You are a real estate dealer in this City, are you not?
A. Yes, sir.
Q. You knew the late Alonzo K. Florida, did you not?
A. Yes, sir.
Q. You were a friend of his, were you not?
A. Yes, sir.
Q. Did you ever hear Mr. Florida say anything about committing suicide?

Judge Adams: When?

Mr. Estes: I asked the general question. If he says he did hear him say anything about it I will fix the time.

A. Yes, sir.
Q. Now when was it Mr. Hammett?
A. It was about the seventh or eighth of January, 1893.
Q. Where?
A. It was at Mr. Reyburn's residence.
Q. You mean Valle Reyburn's residence?
A. Yes, sir.
Q. State what he said and what conversation brought it about?

Objected to on the ground that it is too remote.

Mr. Estes: I will show the connection.

The Court: With that statement on your part I will overrule the objection.

Plaintiff's counsel then and there excepted to the ruling of the court at the time.

116 Q. What was said?
A. I had gone with him to see Mr. Reyburn to discuss his financial affairs and try and make some arrangements to straighten his matters up. After we had discussed the matter for a while Mr. Reyburn and Mr. Wade stepped out into the hall and I was alone in the room with Mr. Florida. He seemed to be agitated and made the remark if he could collect the insurance of a suicide he would settle the whole business.
Q. How was that?
A. He said, if the insurance of a suicide could be collected he would settle the whole business,—that is about the way he put it.

Q. Did you hear him say anything about suicide after that time or have any further conversation with him in which that matter was mentioned?

A. He referred to it once after that, but not in plain direct language as he did on that occasion.

Q. When was that?

A. That was the first of March.

Q. What was said then?

A. We were discussing his affairs and he said he could not stand the pressure much longer.

Q. Mr. Hammett, did you ever hear him speak about insurance and how much insurance he had upon his life?

A. I never heard him say how much he had, but along in the spring of 1892, I heard him speak about taking out insurance.

Q. He did not tell you how much?

A. No, sir.

Q. Do you know anything about a will in which you and Mr. George and the Secretary of the Mississippi Valley Trust Company are named as executors?

A. I saw the will.

Q. Were you the executor of the estate?

Judge Adams: I think that is objectionable, he is calling for the contents of the will.

Objection sustained.

117 Defendant's counsel then and there excepted to the ruling of the court at the time.

Q. What was Mr. Florida's financial condition during the winter of 1892 and 1893?

Judge Adams: We object to that.

Mr. Estes: I will put it this way, do you know what his financial condition was during the winter of 1892 and the beginning of 1893?

Judge Adams: We object to that as immaterial.

The Court: There has been no testimony thus far showing any financial embarrassment in July 1891 or up to July 1892. If there has been any testimony it has escaped my observation.

Mr. Estes: If the Court please, there is testimony to the effect that he had conversations with Mr. George in 1891 and again in May 1892, in which he stated that he was being crowded at the time.

The Court: I don't think there has been any testimony to show any financial embarrassment during that time, as a matter of fact you will remember that Mr. George stated that

there was no question at the time as to his ability to satisfy these mortgages about which he had made a mistake. The main consideration there seems to be to get the parties to accept the money. I will sustain the objection.

Defendant's counsel then and there excepted to the ruling of the court at that time.

Cross-Examination

By Judge Adams.

Q. Mr. Florida was a man of a hopeful nature, was he not?
A. Yes, sir, very.
Q. He was engaged in large business transactions
118 during the summer of 1891 and 1892?
A. Yes, sir, quite large.
Q. He was dealing largely in real estate in this city during that time?
A. Yes, sir.
Q. He believed the City of St. Louis to be a boomed town and did a great deal of business in the boom time of 1892?
A. Yes, sir.
Q. His little boy died in December, 1892, did he not?
A. I think it was December, 1892.
Q. Did he ever appear to be despondent after the death of his child?
A. Yes, sir, he appeared to be very despondent after the death of his child and during his illness.
Q. Both during the summer of 1891 and 1892, and as late as the fall of 1892, he had ample credit at the banks in this city, had he not?
A. He seemed to have.
Q. He was regarded as a prosperous business man in that line of business at that time?
A. Yes, sir.
Q. He was regarded as a man who was making money on his transactions?
A. Yes, sir.
Q. That seemed to be the impression when he spoke to you in January, 1893, when he said if the insurance of a suicide could be collected, he would end the whole matter?
A. Yes, sir, that was the general impression.
Q. He seemed to be under the impression that if he killed himself the insurance could not be collected?
A. That is the view I took of it.
Q. How old was Mr. Florida at the time of his death?
A. I don't remember. He has frequently mentioned his

age to me. I think he was a man of thirty-five or six. That is my recollection. I may not be correct about it though.

Q. It is not unusual for men of his age engaged in
119 large business enterprises to carry from fifty to one hundred thousand dollars of life insurance?

A. My impression is that it is not.

Q. A number of men in a city the size of this carry life insurance in such amounts as from fifty to one hundred thousand dollars?

A. I understand so.

Re-Direct Examination

By Mr. Estes.

Q. Do you know anything about Mr. Florida's financial condition about the middle of July, 1892?

A. I think he was in a prosperous condition at that time. At least he was considered so.

Q. Did you ever ascertain what his exact condition was?

A. No, sir, I did not.

Q. Are you able to state what his condition was prior to January 1892 and the middle of July, 1892?

A. No, sir, I cannot state positively. All I know is the conversations he had with me in which he spoke of his deals and he said that he had made certain deals and had made a certain profit on them.

Q. From the conversation you had with him he led you to believe that he was making a profit on his deals?

A. Yes, sir.

Q. Did he tell you about any fraudulent transactions before July 15th, 1892?

A. No, sir.

(A recess was taken at this stage of the proceeding to 2 p. m.)

120 H. H. Hess, being called and sworn testified on the part of the defendant as follows:

Direct Examination

By Mr. Estes.

Q. What is your name?

A. H. H. Hess.

Q. What is your business?

A. I am in the real estate business.

Q. In this city?

A. Yes, sir.

Q. How long have you been engaged in that business in this city?

A. Three years the 10th of this month since I first came here.

Q. Did you know the late Alonzo K. Florida?

A. Yes, sir.

Q. When did you first become acquainted with him?

A. I first met him about the middle of October three years ago here in St. Louis.

Q. Were you connected with him in business in any way?

A. No, sir, I just worked in the office.

Q. Do you know anything about any fraudulent deals that he was engaged in at the time?

A. No, sir.

Q. Do you know anything about a matter in Wichita that came up while you were in the office in 1891?

A. There was a little transaction I run across in Wichita where I saw some notes of Florida's that had been issued for some western lands.

Q. When were the notes dated?

A. I cannot give you the date.

Q. What year was that?

A. I think it was 1890.

Q. How were they secured?

A. They were supposed to be secured by a deed of trust on some lots out here in Forest Park. That is the way I understood it.

The Court: How did you understand about this matter?

121 A. I learned of it from a Mr. Edgeworth.

Q. And these notes were secured by a deed of trust on the property?

A. Yes, sir.

Judge Adams: Now I object to this transaction for the witness learned of it from some one else; if it was a fraudulent transaction let him produce papers showing that they were fraudulent.

Mr. Estes: The Court intimated that I could go into any matters prior to the time of issuing these policies.

The Court: The objection is as to the character of your testimony and not as to the subject matter of the proof. This witness cannot state what he heard. I will sustain the objection.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Q. Do you know Mr. Hess as a matter of fact whether or not the property that Mr. Florida had mortgaged to secure those notes was worth the amount expressed in the notes?

Objected to as immaterial and incompetent.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Q. Did you ever have any conversation with Mr. Florida in 1891 with reference to fraudulent deals in which he was engaged?

A. No, sir.

Q. When did you leave his office?

A. March, 1892.

Cross Examination waived.

Mr. Estes: I want to offer in evidence if the court please the testimony of Mr. Harvey as set forth in the affidavit.

122 Judge Adams: I will now renew my objection when the affidavit was filed and the ground of my objection is that this testimony is clearly immaterial and relates to matters that took place subsequent to the transactions involved in this controversy.

Objection overruled.

Plaintiff's counsel then and there excepted to the ruling of the court at the time.

Mr. Estes then read the testimony of A. F. Harvey as follows:

(Testimony of A. F. Harvey.)

* * * * * * * * *

That some time in the fall of 1892, I think it must have been in October, a gentleman called at our office and enquired for Mr. Harvey. He was shown into my room and made enqiries concerning the suicide clauses in the policies of the insurance companies of the country and also in regard to the assessment companies and whether the mortality in the assessment companies were increasing on account of suicides. I told him I thought the death rate had increased in the assessment companies on account of the numerous suicides and spoke to him of the experience of the Legion of Honor of this City. I told him I thought the Mo. law regarding suicides was the cause

of so many suicides in this State. He wanted to know what regular companies did not object to pay for suicides. I mentioned three or four companies to him. After some further talk in the same direction he thanked me for my information and left my office. The day after A. K. Florida killed himself. I saw his picture in the papers and I recognized him as the man who several months before had called at my office and with whom I had the conversation as stated above.

* * * * * * * * *

123 Mr. Estes: I now offer in evidence the amount of claims presented against the estate of Alonzo K. Florida in the Probate Court, City of St. Louis.

I will state to the Court that this testimony is in line with the suggestion made by the Court. In this connection I will also offer the will of A. K. Florida.

Judge Adams: We do not concede that to be the will of Mr. Florida and I object to the offer as irrelevant and immaterial.

The Court: I do not see that that appears to bear upon the issues in this case. My present impression is that unless there is some special reason for it I will rule it out. What is the purpose of the offer, Mr. Estes?

Mr. Estes: The purpose is to show the condition of Mr. Florida's mind at the time. These things tend to show that these troubles had been accumulating for some time and would have a strong bearing as showing his condition of mind at the time these applications were made.

Judge Adams: And we object to it as being immaterial and irrelevant.

The Court: I will sustain the objection.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

Mr. Estes: Do I understand that ruling applies to the offer of the will as well as claims presented against the estate in the Probate Court?

The Court: Yes.

Mr. Estes: I want the record to show that I except to the ruling in both instances.

124 William Schoenfeld, being called and sworn testified on the part of the defendant as follows:

Direct Examination

By Mr. Estes.

Q. What is your name?
A. William Schoenfeld.
Q. What is your business?
A. I am a clerk in the Probate Court.
Q. What book have you in your hand?
A. It is a book in which is recorded the abstracts of the demands against estates.
Q. Of deceased persons?
A. Yes, sir.
Q. Turn to that part of the record that relates to the estate of Alonzo K. Florida, deceased?
A. Yes, sir, I have it here.

Mr. Estes: If the Court please I will offer this in evidence, being the record of demands in the Probate Court against the estate of Alonzo K. Florida, deceased, showing the amounts which have been allowed up to the September Term 1894 against Mr. Florida's estate.

Objected to as entirely immaterial.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

Mr. Estes: Let the record show that I offer this for the purpose of showing Mr. Florida's financial condition at the time these transactions took place.

Mr. Estes: In connection with the claims that were allowed I offer in evidence these contested demands against the estate. The first claim is that of F. G. Flanigan vs. The Mississippi Trust Co. Administrator of the estate of Alonzo K. Florida, deceased.

125 Objected to as incompetent, immaterial and irrelevant.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the Court.

Mr. Estes: I offer in evidence a certified copy of the judgment of the Probate Court of the City of St. Louis in the case of F. G. Flanigan vs. the Mississippi Valley Trust Co. Administrator of the estate of Alonzo K. Florida, deceased.

Same objection.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

The Court: It does not appear from that certified copy of the judgment when the debt was contracted or how long it was in existence.

Mr. Estes: In order to save time I can offer all of these claims that I have here.

Judge Adams: One is just like the other and the same objection applies to all.

The Court: If you want to offer them separately I can rule on them all. Some might be admissible. I cannot tell until they are preseted to me. You had better offer them one at a time.

Mr. Estes: Well here is one claim for $2050

Judge Adams: And we object to that as being entirely immateral. It appears to be a disputed claim and certainly would have no bearing on the issues of this case.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

Mr. Estes: Here is another claim of the same character.

126 Same objection.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

Judge Adams: I don't see why he should offer these claims for, taken in connection with his statement that they are disputed claims would clearly render them incompetent and immaterial.

Mr. Estes: I have a number of those claims of similar character and I think it is only consuming time as long as the court has ruled on the others.

The Court: Are all those you are offering now contested claims?

Mr. Estes: Yes, sir.

The Court: If you have any papers in your possession which raise the presumption of indebtedness on the part of Mr. Florida at the time or approximating the time of these transactions, it will be received in evidence.

Mr. Estes: That is what I have here.

The Court: I differ with you there Mr. Estes, those are disputed claims.

Mr. Estes: Well I make the offer of these papers as I have done before.

Judge Adams: And I object to them for the reason I have already stated.

The Court: I will sustain the objection as to those disputed claims.

Defendant's counsel then and there excepted to the ruling of the Court.

127 Nancy L. Florida, being called and sworn on the part of the defendant testified as follows:

Direct Examination

By Mr. Estes.

Q. Your name is Nancy L. Florida?
A. Yes, sir.
Q. You are the widow of the late Alonzo K. Florida?
A. Yes, sir.
Q. Mrs. Florida I wish you would please state the amount of insurance that Mr. Florida had upon his life?
A. There was $50,000. in the New York Life; $15,000. in the Aetna; $5,000. in the Merchants Life; $10,000. in the Connecticut Mutual.
Q. I am asking you for all the insurance?
A. I think there were two policies in the Connecticut Mutual for $10,000. each.

Judge Adams: Do you know that of your own knowledge?

A. No, sir.
Q. You know the Connecticut issued one for $10,000.?
A. Yes, sir.
Q. Well what else, Mrs. Florida?
A. There was the Mutual Life.

Judge Adams: Mrs. Florida do you know anything of your own knowledge about the insurance for the benefit of the estate?

A. No, sir.
Q. You never saw all of those policies?
A. No, sir.

Mr. Estes: Can you state any more policies that he had of your own knowledge?

A. I cannot recall any now.
Q. Do you know how much he had in the National of Vermont?
A. No, sir.
Q. Do you know how much he had in the Legion of Honor?
A. Yes, sir, $2000.
128 Q. When did he join the Legion of Honor?
A. I cannot say.
Q. About how many years ago?
A. Well I think it has been since he came to St. Louis.
Q. Do you know anything about the Northwestern?
A. I do not.
Q. Did the New York Life pay you?
A. Yes, sir.
Q. $50,000?
A. Yes, sir.
Q. Did the Mutual Life pay you?

Judge Adams: She didn't have any in the Mutual Life.

Mr. Estes: Did the estate have any in the Mutual Life?

A. I cannot say.

Cross Examination waived.

John R. Christian, being produced, sworn and examined on the part of the defendant testified as follows:

Direct Examination

By Mr. Estes.

Q. State your name?
A. John R. Christian.
Q. You are a practicing attorney?
A. Yes, sir.
Q. You were attorney for Mr. A. K. Florida, were you not?
A. Yes, sir. I was his attorney for a number of years or rather in a number of cases.
Q. You were his regular attorney were you not?
A. I presume I was. I do not know that he employed anybody else in St. Louis besides myself and my partner, Mr. Wind.
Q. Did Mr. Florida turn over his estate to you?
A. He turned over what I supposed to be his estate to myself and Mr. Wonderly.
129 Q. When was that?
A. The contract was dated the 20th day of January, 1893.
Q. What was his object in turning over his estate to you and Mr. Wonderly?

A. Mr. Florida reported to me, and I knew it myself, that he was somewhat embarrassed and was being crowded by certain indebtedness and it was the intention to help carry him over this embarrassment and let him continue business.

Q. To what extent was he embarrassed at the time he turned over his estate to you and Mr. Wonderly?

A. I cannot tell you exactly, but he had a statement which he showed me and I think it was between $200,000 and $300,000.

Q. Do you think it would approximate three hundred thousand?

A. Three hundred thousand would cover it, I do not remember the exact amount.

Q. How was that indebtedness secured?

A. Well he owed the St. Louis National Bank about fifty-five thousand dollars that was secured as I understood by mortgages and personal security of various parties.

Q. Were the mortgages fraudulent or not?

A. I never knew of any of them being fraudulent that were turned over at that time. I think most of them were second mortgages or second deeds of trust.

Q. Go on and state any other indebtedness that he had at that time?

A. He was indebted to the Mississippi Valley Trust Company but I think that indebtedness was secured by first mortgages entirely.

Q. Were these mortgages fraudulent or not?

A. I never heard that any of them were. I do not remember that they had any trouble with any of them.

Q. Don't you remember it was just the very day that
130 he killed himself the Mississippi Valley Trust Company had sent for him because they had discovered some fraudulent transactions?

A. I don't know about that at all.

Q. Didn't Smith P. Galt represent the Mississippi Valley Trust Company in that matter?

A. Since you speak of it, he did represent a party who had a deed of trust and I think that it was discovered that the Mississippi Valley Trust Company had a deed of trust on it also but I never knew the exact details in the matter.

Q. You knew Smith P. Galt's client had some claim on the property?

A. I merely heard so.

Q. Mr. Christian did you make an examination of the statement of his indebtedness at the time he gave it to you?

A. Well yes, he presented a statement there which had been prepared for him by some one connected with the Mississippi Valley Trust Company and he was arranging with them

as I understood it to make a similar arrangement to the one that was afterwards made with me.

Q. This statement then as I understand it contained a list of his assets and liabilities?

A. That description would practically cover it.

Q. How far back did any of these liabilities extend?

A. I cannot state as to that. You mean liabilities to whom?

Q. To anybody?

A. Well he was owing the banks, which included Noel and I cannot say they run back. I do not know about that.

Q. As a matter of fact Judge Christian, don't you know that these liabilities extended as far back as 1890?

A. I would say no to that question. I don't think the banks let those things run. A great many of the liabilities were owing to the banks and they generally renew those matters every sixty or ninety days and of course I cannot

131 say how many times they have been renewed.

Q. Don't you know that he had been carrying on a long series of deals with these banks?

A. I can only assume from the statement that they had run for several months. I knew that some of them were maturing right along. Some of the indebtedness to the banks matured a short time after I took charge of the estate.

Q. Do you know how much he was owing the Mississippi Valley Trust Company at that time?

A. I do not know exactly but I think it was about forty thousand dollars.

Q. As a matter of fact wasn't it $70,000?

A. I do not think it was so much as that.

Q. That extended over what period?

A. I cannot say as to that. All I remember is that most of this indebtedness was with the banks and was on sixty and ninety days' time. How often it had been renewed if it all, I cannot state.

Q. You could not state as to that?

A. No, sir, I never went into details of this matter at all. I saw that the banks were amply secured and I did not go into the matter any further.

Q. How much did he owe Mr. Noel?

A. I think $42,000. That included what he called his bonds.

Q. Didn't it afterwards develop that he owed him more than that?

A. It is possible that he did. I think that was the amount we [figures] on at the time.

Q. How far back did that extend?

A. My understanding about these bonds were that they run back about a year or a year and a half.

Q. Do you know how far back his other indebtedness to Noel extended?

A. No, sir, I do not.

Q. Didn't you discover that Mr. Florida instead of owing Mr. Noel $42,000, the amount returned to you, that
132 he owed him nearer $70,000?

A. No, sir, I never discovered that.

Q. Didn't you discover that he owed Mr. Noel a great deal more money than was returned to you as being the amount?

A. I only know what Mr. Noel said to me after Mr. Florida's death. I paid no further attention to that indebtedness.

Q. What did Mr. Florida say to you when he came there to turn the property over to you?

A. Well his conversation was about this: he said that he was owing the banks, the different banks in the city here so much.

Q. Can you recall how much to the different banks?

A. $55,000, to the St. Louis National.

Q. How much to the Boatman's?

A. I think about $27,000, that is my impression now.

Q. The Laclede how much?

A. About $27,000.

Q. What else?

A. He owed miscellaneous parties according to the report made to me about $15,000, that did not include what he was owing Mr. Wonderly and myself. He was owing us about fifteen or sixteen thousand dollars in addition to that.

Q. What did he say when he came there?

A. He said that the banks were amply secured with collateral except some at the Boatman's which had personal security. He said he wanted me to pay the banks and in consideration he would turn this property over to me and he wanted me to take charge of the estate and work with him and we would finally sell off the property as we could and take down the collateral from the various banks that held it and in this way we could within ninety days or six months have realized him something out of his equities.

Q. What did you say his equities were estimated to be worth at that time?

A. About $125,000, according to the estimate that was made.

133 Q. Did you make the estimate?

A. No, sir, I did not but we all went over it together and I believe it had been passed upon by the Mississippi Valley Trust Company and that seemed to be the general opinion.

Q. How long had he been owing the Boatman's Bank?

A. I do not know. But what he was owing according to that statement matured within sixty days. Some of it was in four or five days after I took hold.

Q. Do you know how long he had been owing the Laclede Bank?

A. No, sir.

Q. Do you know how long he had been owing these miscellaneous parties?

A. No, sir, I do not. I know I paid an indebtedness of $5,000 to Mr. Warren that had been owing about eight months.

Q. Do you know how long any of the other indebtedness to these miscellaneous parties had been running?

A. I never found out how long he had been owing these different parties.

Q. How long had he been owing you?

A. Well I held a number of notes against him varying from two hundred and fifty dollars to as high as four thousand dollars. I think the first money I let him have was in 1891 and I had loaned him money from time to time up to December 1892.

Q. He was a constant borrower was he not,—you know that to be a fact, don't you?

A. Yes, he borrowed a great deal of money and I myself have loaned him a great deal.

Q. Did you ever have any disagreement with Mr. Florida about money matters at all?

A. No, sir.

Q. Did he give you a deed of trust on a farm or piece of land he held in Illinois as collateral security for a $2,000. loan?

A. There was such a transaction.

134 Q. Please tell us what it was?

A. Mr. Florida first borrowed $2,000. and gave as collateral security some property, I am not sure just what it was, but I know it was perfectly good and when it came due, he came to me and said,—when this collateral came due I mean, I don't remember whether it was sixty or ninety days,—

Q. What year was that?

A. It was in the year 1892, possible 1891.

Q. Go on and state what you were going to?

A. Well, when it came due it was renewed and it is possible it run on up to 1892. It may have been renewed twice, but I do not remember exactly about that.

Q. You think the renewals carried it up to 1892?

A. Yes, sir.

Q. Well go on?

A. Well when the collateral was paid he came in and told me about it and said if I had no use for the money he would like to keep it. I told him I would be glad to have him keep it and so he gave me a $2,000. note secured on property in Macoupin County, Illinois.

Q. Well tell about that transaction?

A. That is the transaction where he gave me the deed of trust on property in Illinois, that I held at the time of his death.

Q. Did you ever have any suspicions about the deed of trust when he offered it to you?

A. None whatever. I had great confidence in Mr. Florida.

Q. Didn't he give you the names of parties in Illinois that you could write to to find out if it was all right?

A. After Mr. Florida had turned over his estate to me and I commenced paying off his indebtedness and had paid out considerable money and found there was considerable more to be paid out, I thought of this deed of trust and sug-
135 gested to him that it would be a good idea to collect the $2,000. on that farm and apply it for paying some other indebtedness of his and I asked him to give me the name of some person up there who would stir up the man who was owing it so that we might realize on it. He finally gave me the name of a party I do not remember the name now and I wrote to him but never heard from him regarding it. That occurred only a few days prior to Mr. Florida's death.

Q. Was he disturbed at all when you asked him to give you the names of some parties that you could write to?

A. I cannot say that he was disturbed about it,—he hesitated some time before giving me a name and finally gave me the name of this party.

Q. When did you discover about his fraudulent transactions?

Judge Adams: I object to that question as it has not been shown here that there was any fraudulent transaction.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Q. Do you know of your own knowledge of any fraudulent transaction Mr. Florida was engaged in in this town?

Judge Adams: At what time?

Mr. Estes: At any time.

Objected to as incompetent.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Q. Did you find out anything about fraudulent transaction that he had engaged in in 1891?

A. I cannot say that Mr. Estes as a matter of my own absolute knowledge.

136 Q. What is the general reputation in that regard here in the city. The general repute in regard to that matter?

Objected to as immaterial.

The Court: You cannot establish the fact of any fraudulent transactions by that sort of testimony, I will sustain the objection.

Defendant's counsel then and there excepted to the ruling of the court at that time.

Mr. Estes: May I enquire of the court, do I understand that you sustain the objection on account of the form of the question, or does your ruling go to the substance. I can prove fraudulent transactions running back as far as 1891 and as this matter was a matter of common notoriety it is not a question of one man's opinion but a question of every man's opinion.

The Court: I could not let a matter of that kind go to the jury on that sort of testimony.

Mr. Estes: I would like the record to show that we note an additional exception to the ruling in view of what has just been stated.

Q. Do you know whether or not Mr. Florida had forged any deeds of trust in his dealings in 1891 and 1892?

A. Of my knowledge, I do not know anything of the kind.

Q. Did you investigate his affairs after his death?

A. Not to any extent. What information I got was just what everybody else got.

Q. The information you got, was what everybody else got?

A. Yes, sir, what I saw in the papers.

Q. Do you remember making a statement to Mr. Merrill, representing the Aetna Life Insurance Company, the defendant in this case?

A. I think I talked with him about this matter, yes, sir.

137 Q. Didn't you state to him that you had found out he had forged over forty deeds of trust?

A. I don't think I made that statement to him. If I did, it was certainly a careless statement on my part. I certainly never knew he forged any deeds of trust to my knowledge.

Q. Didn't you make the statement that it had been found that he had forged over forty deeds of trust or there were over forty deeds of trust on which he had raised money that were fraudulent?

A. I don't think I made any such statement to him.

Q. What did you tell him?

A. I think I stated to him that after Mr. Florida's death a number of fraudulent deeds of trust had been found that were released by him. I think that was about the statement I made to him: If I used the word "forty" it was certainly a very careless remark on my part. My recollection is that I just said to him, that a number of fraudulent deeds of trust had been released by him and I don't think that I even mentioned the number.

Q. Do you remember stating to him how far back any of these transactions extended?

Judge Adams: This is his own witness and if he is trying to impeach him, I think he ought to lay the proper foundation.

Mr. Estes: Do you know how far back these fraudulent transactions extended?

A. I only know what I have heard. Of my own personal knowledge I could not tell you that there were any fraudulent transactions. I only know what others have told me.

Judge Adams: I object to his stating that.

The Court: The objection is sustained.

Defendant's counsel then and there excepted to the ruling of the court at the time.

138 Cross-Examination

By Judge Adams.

Q. You knew Mr. Florida quite well for a good while?

A. Yes, sir.

Q. When did you first meet him?

A. I met him when he first came to the city. He had moved up to a farm in Randolph County and I think I prepared the contract between he and Mr. Hammett.

Q. When was that?

A. That was along about 1890.

Q. How well did you know him?

A. I knew him in a general way for several years and after he came to St. Louis and went into the real estate business I met him oftener and became better acquainted with him.

Q. How well did you know him in '91 and '92?

A. Well I might say I knew him intimately.

Q. Say from 1890 down to the time of his death you knew him quite intimately.

Q. How often did you see him, say the last year of his life?

A. Well during the last year I think I saw him two or three times a week, sometimes every day and sometimes two or three times a day.

Q. At any time prior to his death did you ever hear any suggestion coming from him which would indicate an intention on his part to take his life?

A. No, sir.

Q. You had a large number of business transactions with him?

A. Yes, sir.

Q. You were his attorney?

A. Yes, sir.

Q. You were sometimes interested in transactions with him?

A. Yes, sir.

Q. You loaned him money?

A. Quite frequently, yes, sir.

Q. He was what you called an extensive dealer in
139 real estate?

A. Yes, sir.

Q. You are familiar with the real estate business in this City?

A. Yes, sir.

Q. Is it not a fact that the real estate men in this city or many of them do a large and important business involving hundreds of thousands of dollars?

A. Yes, sir, that is not unusual.

Q. It was nothing uncommon for Mr. Florida to be involved in transactions involving large amounts of money?

A. No, sir, he was what I would call a "plunger."

Q. I wish you would describe to the jury something about the real estate business in St. Louis in 1892?

A. Well during the year 1892, the real estate all over the city and especially in the western part of the town and especially in the suburbs was increasing in value and a large amount of property was bought and sold.

Mr. Estes: I object to this as absolutely immaterial.

Judge Adams: Go on Mr. Christian?

A. Property outside of the city limits sold as high as $1,500. to $2,000. an acre. Large blocks of land were being laid out into lots and matters looked very prosperous.

Q. Mr. Florida himself was interested in a number of syndicates who were doing this kind of work?

A. Yes, sir, and he was doing a great deal of it himself.

Q. Will you tell the jury, during 1891 and 1892 what Mr. Florida's general appearance was as to cheerfulness and buoyance?

A. He was a cheerful light-hearted man, and I never knew him to be in any other than the very best of spirits.

Q. He was generally recognized as a big hearted man who made everybody his friend?

A. Yes, sir.

Q. Did he ever express himself during 1891 and 1892 in regard to his prospects?

140 A. He always reported to me up to January 1893 that he was making large amounts of money and I remember once when he qualified on a bond, he sworn to be worth $25,000. and that was several years ago and I heard him qualify on another when he swore he was worth $75,000. over and above his indebtedness and that he was making about $25,000 a year.

Q. At the time of this transaction with him, when you took charge of his property in order to straighten it out, did he make any statement to you as to what he considered his equities were worth?

A. I think we figured the equities to be about $93,000. and the excess collateral at the bank run it considerably over $125,000.

Q. Then he considered himself worth $125,000?

A. Yes, sir, that would be the surplus arising out of his equities.

Q. Do you know what caused his embarrassment at that time?

A. He was a man carrying on a great many large schemes and he had a great deal of indebtedness maturing at the banks faster than the money would be coming in to meet it and the object was to realize on some of his properties and meet these obligations and thus tide over the embarrassment and put him on his feet again.

Q. When was the first information received by you that he was embarrassed?

A. January, 1893.

Q. The first you knew of any financial embarrassment was as late as January, 1893?

A. Yes, sir.

[Q.] Judge Christian: Do you remember about the middle of May, 1893, Mr. George came out to your room at the West End Hotel and on that occasion said to you in substance that

if Mrs. Florida did not pay the debt that was due him from the estate he would testify against her in her insurance case.

Objected to as not growing out of the direct examination.

141 The Court: This is your witness Mr. Estes.

Mr. Estes: I put him on for a certain purpose. Do I understand the court to rule that he can cross-examine him on any matter?

The Court: That was my ruling.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Q. Did Mr. George state that to you in substance, Judge Christian?

A. It was in 1893, about the middle of May, 1893, he made the statement to me substantially as you have stated it here. That was not his exact language, but that was the substance of what he said.

Q. Wasn't the special reason for Mr. Florida's turning his property over to you, caused by the fact that the banks were retrenching on their customers, especially him?

Objected to as incompetent.

Judge Adams: If you know Judge Christian?

A. I cannot say that the banks were retrenching on their customers.

Q. How was it with Mr. Florida?

A. I understood that Florida had borrowed about all the money he could get from the banks. In fact I knew that to be the case and it was necessary to get money [for] other sources.

Re-Direct Examination

By Mr. Estes.

Q. Do you know how much insurance he had on his life—that is of your own knowledge I mean?

Objected to as being new matter and not proper on a re-direct examination.

Objection overruled.

Plaintiff's counsel then and there excepted to the
142 ruling of the court at the time.

A. Of my own knowledge I think he had from one hundred and ten to one hundred and twenty thousand dollars,

but I think there was one policy of $15,000. which he allowed to lapse in January, 1893. At the time of his death I held, I think, $65,000. payable to his estate. I think this $15,000 that lapsed was payable to Mrs. Florida.

Q. How much more did he have at that time?

A. I only know by general information. I never saw the policies. Yes, there was ten thousand dollars more that I know of but I cannot recall the company now.

Q. Do you know how much insurance he had on his life at any time in favor of his wife and how much in favor of his estate?

A. Of my own personal knowledge I cannot say, as I did not see all of the policies.

Q. Do you know how much he had in the New York Mutual Life?

A. Twenty-five thousand dollars, I think.

Q. Do you know how much he had in the National of Vermont?

A. I think twenty thousand dollars.

Q. Both of these companies have paid up?

A. I believe so.

Q. Do you know as a matter of fact that both of these companies have no suicide clause in their policies?

A. I know that the New York Life has no suicide clause in its policy.

Q. They paid their policies did they not?

A. Yes, sir.

Q. How about the Mutual Life of New York?

A. I think they issue a policy that is incontestable after two years.

Q. Wasn't that the old law under which their policies were issued?

A. I would not be positive about that.

The Court: That is not pertinent here.

Mr. Estes: You are the plaintiff on an assigned
143 policy from Florida in a case similar to this against the Massachusetts Mutual Life Insurance Company, are you not?

Judge Adams: I don't see the propriety of that question.

Mr. Estes: I want to show there is a controversy all around over these matters.

The Court: I will sustain the objection.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Henry M. Noel, being called and sworn testified on the part of the defendant as follows:

Direct Examination

By Mr. Estes.

Q. State your full name?
A. Henry M. Noel.
Q. What is your business Mr. Noel.
A. I am in the banking business and I am also a broker.
Q. Did you know A. K. Florida?
A. Yes, sir, I knew him.
Q. How long had you known him prior to his death?
A. I suppose two or three years.
Q. How did you become acquainted with him?
A. I met him here in St. Louis in a business way.
Q. What was that business way Mr. Noel?
A. Well mostly as a borrower of money.
Q. When did he borrow the first money from you?
A. I have no recollection at present.
Q. When with respect to making your acquaintance?
A. Well that would be shortly after I became acquainted with him.
Q. Did he borrow money from you frequently from that time on?
A. Yes, sir.
144 Q. In short he borrowed money from you constantly from the time you first met him until the time of his death?
A. Yes, sir.
Q. You say frequently, will you now explain to the jury, how frequently he borrowed money?
A. Well of course some little time elapsed between making one loan and making another and I could not state definitely anything about it, without reference to my books.
Q. Tell us about how it would run?
A. Sometimes every month—sometimes every week.
Q. Do you think it would average once a month?
A. Yes, sir, and sometimes it would average once a week, that is my general recollection.
Q. Do you know in what sums he would borrow?
A. I have loaned him varions sums. I have loaned him as low as a one hundred dollars at a time and as high as forty thousand dollars.
Q. How much did he owe you at the time of his death?
A. I should say it was something over $50,000.
Q. Can you state what year it was when he began borrowing money from you?
A. How is that?

Q. Can you state what year it was when he began borrowing money from you?

A. I think it was 1891 or 1892. I would not be positive without looking at my books.

Q. Do you remember when he killed himself?

A. I think it was April, 1893.

Q. How long had he been borrowing money from you before that?

A. Probably two years.

Q. You think he had been in the habit of borrowing money from you for about two years before his death?

A. Yes, sir.

Q. That would run it back to April, 1891?

A. Yes, sir.

Q. Do you know anything about his dealings with
145 the St. Louis National Bank, Mr. Noel?

A. I know he owed them considerable money at various times.

Q. Do you know when he began borrowing from them?

A. I do not know that I could fix the date.

Q. You were one of the directors in the bank?

A. Yes, sir. I was cognizant of his borrowing money at various times from that bank.

Q. But you could not fix the date when he began borrowing money from the St. Louis National?

A. No, sir.

Q. Wasn't it about the same time that he began borrowing from you?

A. I would not be positive, but I think it was along about that time.

Q. Did you ever hear him say anything about committing suicide?

A. No, sir.

Q. Your business with him right straight through was loaning money?

A. Yes, sir, I loaned him money, I think I made some real estate trades with him.

Q. You talked with him considerably about money matters did you not?

A. Yes, sir.

Q. Did you ever have any social connections with him?

A. I cannot say that I did.

Q. Did you ever talk with him on any other subject than money matters?

A. I talked with him a great deal. Our conversations were mostly on the subject of money matters, but I would not say that I did not talk to him on any other subject.

Q. Did you ever talk to him on the subject of suicide?
A. No, sir, I never did.
Q. Did you have any security from him for these loans?
A. I had what I considered security.
Q. Did it turn out to be security?
146 A. Some of — did and some of it did not.
Q. What kind of security was that?
A. Well bogus notes and deeds of trust that had been released from the records after I got them. Some of them turned out to be entirely unsecured.
Q. Bogus notes. I guess we all know what that means?
A. Yes, sir, that is what I call them.
Q. How much of that kind of stuff did you have Mr. Noel?

Judge Adams: I object to his going into this question of fraudulent transactions and fraudulent notes and bogus deeds of trust, without he produces the papers and shows that they are fraudulent.

The Court: What time are you referring to Mr. Estes?

Mr. Estes: April 18, '91. This witness has stated that he became acquainted with Mr. Florida who began borrowing money from him about two years ago and among the securities were some bogus deeds of trust and notes.

Judge Adams: We object to their going into it without they produce the papers themselves and show that they were fraudulent.

Judge Adams: Let me ask you Mr. Noel how long had these securities been in your possession that you say turned out to be bogus before he killed himself?

A. Thirty to sixty days.
Q. You never heard of any fraudulent transactions before that?
A. I did not know of any.

Mr. Estes: Were all of the mortgages and notes which he gave you in 1892 good?

A. I do not know because he always took them up regularly and promptly whenever they matured and I never investigated them.
Q. He always met his paper promptly?
A. Yes, sir.
Q. When did he first become involved, do you know?
A. No, sir, I do not.
147 Q. What was the amount of these bogus notes you spoke of?

Judge Adams: In view of the witness's statement that he never held any of these so-called fraudulent notes more than sixty days prior to Mr. Florida's death, I object to that question as being immaterial.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the court at the time.

Q. Have you been able to realize on any of these notes that you held as security?

A. Some of them I have and some I have not. I do not know that I was justified in calling all of them bogus notes.

Q. Do you know how far back any of these fraudulent transactions extended?

A. I would not be able to state that of my own knowledge.

Cross-Examination

By Judge Adams.

Q. Your business is loaning money?

A. Yes, sir.

Q. At the time you began loaning money to Mr. Florida in 1891, he gave you security which were satisfactory to you?

A. Yes, sir.

Q. He continued as a favorite customer of yours for some time,—say till 1893?

A. I loaned him a great deal of money and he always met his paper promptly.

Q. Those relations continued down to 1893?

A. Yes, sir.

Q. He borrowed money from time to time in various sums giving you satisfactory securities and meeting his obligations promptly?

A. Yes, sir.

Q. You knew he was a large dealer in real estate and
148 transactions of that kind in this community during 1891 and 1892?

A. That was my understanding.

Q. I think you said you were interested in some syndicates with him?

A. No, thank goodness, I was not. I had some dealings with him in regard to real estate matters.

Q. It is a fact is it not Mr. Noel, that it was nothing unusual for men engaged in the real estate business in this city to be large borrowers of money at that time?

A. No, sir, it was nothing unusual.

Q. Mr. Florida was considered to be doing a large business?

A. Yes, sir.

Q. Men engaged in business enterprises of this kind at that time were in the habit of borrowing large sums of money from the various banks in this city for the purpose of carrying on their busines transactions?

A. Yes, sir.

Q. Most people have to do it, if they expect to do much business in this community?

A. Yes, sir.

Q. Was not Mr. Florida of a bright, cheerful and hopeful temperament

A. Yes, sir.

Q. He was always expecting to accomplish great things?

A. Yes, sir.

Q. He was always engaged in some enterprise during the years 1891 and 1892?

A. Yes, sir, I think he was what you would call a boomer of real estate.

Q. He seemed thoroughly impressed with the future of real estate in this city?

A. He certainly did.

Q. He was considered a shrewd real estate man?

A. Yes, sir. I have a little skill in that line myself but he was smarter than I was.

Q. A great many persons borrowed money from you
149 at that time?

A. Yes, sir.

Q. And a great many others were borrowing from the banks?

A. Yes, sir.

Q. All the large dealers in real estate during 1891 and 1892 were borrowers from the banks were they not?

A. I think so.

Defendant rests.

TESTIMONY IN REBUTTAL.

Rufus J. Lackland, being called and sworn testified on the part of the plaintiff in rebuttal as follows:

Direct-Examination

By Judge Adams.

Q. State your full name?
A. Rufus J. Lackland.
Q. You reside in the city?
A. Yes, sir.
Q. And are President of the Boatman's Bank?
A. Yes, sir.
Q. Did you know Alonzo K. Florida during his lifetime?
A. Yes, sir.

Q. How often did you have occasion to see him during the years 1891 and 1892 and prior to August, 1892?

A. I saw him every few days. Certainly two or three times a week.

Q. Did he do any business with your bank?

A. Yes, sir.

Q. How much business did he do with your bank during 1891 or 1892, say?

A. There was a time when he did a very large business at our bank, I think the transactions amounted to over $200,000.

Q. What time was covered by those transactions?

A. Well 1889, 1890, 1891, 1892 and as far as 1893.

Q. Will you describe the general characteristics of
150 Mr. Florida with reference to cheerfulness, during the years 1891 and 1892 when you saw him?

A. He was a very smart, energetic young man, of very hopeful, cheerful disposition, full of energy, and I always regarded him as a very prosperous man.

Q. Did he have any difficulty in meeting the demands of your bank in the way of discounts prior to 1892 say December 1892?

A. There was no failure on his part to meet his notes promptly when they became due.

Q. He met his notes promptly up to the time of his death?

A. Yes, sir.

Q. What was his business?

A. It was a general real estate business, buying and selling property.

Q. Was he a large dealer?

A. He was quite an extensive dealer.

Q. Is it anything unusual for large dealers to borrow large sums of money at the banks in the City of St. Louis for the purpose of carrying on their transactions?

A. No, sir, it was something very common.

Q. That is what the banks are for?

A. Partly, yes, sir.

Q. Now will you state to the jury during the years 1891 and 1892 during the time when you saw Mr. Florida nearly every day, whether or not you saw any evidence of a disposition to commit suicide?

A. None whatever. That is the last thing I thought of him.

Q. Did you have occasion to see him frequently during the months of July and June 1892?

A. Yes, sir.

Q. Are you able to state about how often you saw him during those months?

A. At least two or three times a week.

Q. What was the condition of his mind as far as cheerfulness and hopefulness is concerned?

A. He appeared to be very hopeful and seemed to
151 think the prospects before him were very bright.

Q. You saw nothing to indicate that he was despondent?

A. No, sir.

Q. The transactions he carried on with your bank during that month were the same as he had been carrying on for sometime?

A. Yes, sir.

Q. He met his notes as they matured promptly?

A. Yes, sir.

Q. He appeared to be in good health?

A. Yes, sir.

Q. And appeared to be doing a prosperous business?

A. Yes, sir.

Cross-Examination

By Mr. Estes.

Q. You were very much impressed with Mr. Florida's ability as a dealer in real estate were you not?

A. Yes, sir, I thought him a very energetic bright, smart young man. A man way above the average.

Q. You thought him rather an extraordinary man?

A. No not an extraordinary man but above the average.

Q. How much business had he done with your bank up to the time [on] his death?

A. I think it would approximate $200,000.

Q. How much was he owing you at the time of his death?

A. $15,000 or $20,000.

Q. Didn't he owe you over $32,000?

A. I could not say positively as to that if he did we had security for it.

Q. Did you realize the amount of your indebtedness from the securities you had?

A. We have not realized all of it yet.

Q. What is the balance unpaid?

A. Along about ten or fifteen thousand dollars.

Q. Did you know that he was borrowing large sums
152 of money from the other banks?

A. He did not say what he was owing the other banks. I knew he was doing business with them though.

Q. Did you know that he was borrowing very largely from the other banks?

A. I could not say to what extent he was transacting business with them.

Q. Did you ever ask him whether or not he was owing large sums to the other bank?

A. I never questioned him as to the amount he was owing the other banks. He brought me a statement of his affairs I think it was in 1891 showing him to be worth about $250,000.

Q. Did you see that statement made up in 1893 showing the amount of his wealth at that time?

A. No, sir.

Q. Do you remember loaning him any money in February or March, 1893?

A. I think we did. We loaned him considerable money only a few months prior to his death.

Q. Did you loan him any money during April, 1893?

A. I think we loaned him some money a week or ten days before his death.

Q. His business at the bank was largely borrowing money on collaterals?

A. Yes, sir.

Q. Did you know about the transfer of his property to Mr. Christian and Mr. Wonderly at the time the transaction took place?

A. No, sir.

Q. Did you know that he was engaged in a number of fraudulent transactions?

A. What?

Q. Did you know that he was engaged in a great number of fraudulent transactions—fraudulent deals?

A. No, sir, I never dreamed of such a thing.

Q. You knew nothing about that until after his death?

A. No, sir, I never dreamed of it.

153 George P. Brown, being called and sworn testified on the part of the plaintiff in rebuttal as follows:

Direct-Examination

By Judge Adams.

Q. State your name?

A. George P. Brown.

Q. What is your business?

A. I am an agent of the New York Life Insurance Co.

Q. Were you the agent of that Company in the fall of 1892?

A. Yes, sir.

Q. Did you solicit insurance from Mr. Florida where a $50,000. policy was taken out in your Company?

A. Yes, sir.

Q. When was that application written?
A. On the 28th of December, 1892.
Q. When was the policy issued?
A. January 11th, 1893.
Q. Now how long before that application was signed had you been working with Mr. Florida trying to get him to take out insurance in your Company?
A. My recollection is that I first met Mr. Florida the latter part of 1891, and he was recommended to me as a man of means and one who believed in life insurance. I found that he had taken out insurance in other companies and I concluded we had better see him in case he needed anymore. I spoke to him about it and asked him to let us write him a policy and he said he had just taken out some and so the matter drifted along and I visited him from time to time as often as I thought the interest of the Company demanded until along in the fall of 1892 when we did not seem to be getting any closer to taking out insurance and I concluded that I had better make an extra effort as a big policy of insurance would help out my year's business.
Q. Well come right down to the application of December 1892 and state the circumstances that led up to the sign-
154 ing of that application?
A. Well the circumstances were that I went to see him frequently and spoke to him about insurance and I saw him two or three times and would make engagements with him which he would find it impossible to keep. I telephoned once to see if he was there when he had made an engagement and found that he had something else on hand and could not talk with me. He made several engagements he could not keep for just such reasons and as I desired to close up the business before the end of the year as my compensation depended somewhat on the amount of business that I had done I asked him if he would make a positive engagement with me. I went in one morning and saw the secretary Mr. Bouche I believe who gave me some evasive answer in regard to Mr. Florida and we had some unpleasant words about it as it was evident to me he was trying to keep me from seeing Mr. Florida. Finally I saw him and Mr. Florida said I have two gentleman here now that I must speak to. I told him this would not take but a minute and here was the application and if you will sign it you can fill it up at your lesiure. He wrote his name and occupation and asked me some few questions which I answered and told him if he was in a hurry we could arrange the details afterwards. I remember he signed the application A. K. Florida when we generally require a full name.
Q. Well go on and state any other details leading up to the issuing of the policy?

A. Of course he had to be examined by our medical examiner and we had about the same trouble in that regard that I had in getting the application signed. He would make engagements with the Doctor for a certain hour whose hours were generally from twelve-thirty until he got through but Mr. Florida would be unable to keep the engagement on account of business and so finally we despaired of getting him that
155 way and I finally got the Doctor to go out to his house. That is the only way that we could get the matter fixed up as Mr. Florida was so busy it seemed impossible for him to attend to these matters. He was always putting us off with to-morrow would do or that he was too busy to attend to it to-day and I concluded the best way to do would be to have the Doctor go out.

Q. Well then go on and state what next occurred?

A. I concluded as long as nothing definite had been said about the amount of insurance to make it $10,000. and when we found he passed such a fine physical examination I went to the manager and said to him "Mr. Hill here is a man with only $10,000. in our Company and I want to make it at least two tens or $25,000. which would make fifty thousand dollars in all. Mr. Hill looked over the examination and thought that it was a good risk. A second examination is required in a policy of that kind and we had the same difficulty with the second examination that we had with the first. But finally we got the matter through and the policy was issued.

Q. Is it anything unusual for men engaged in large business enterprises to carry insurance ranging in amounts from $25000. to $100,000?

A. No, sir, that is not unusual.

Q. As I understood you you had spoken to him about insurance before July, 1892?

A. Yes, sir, I spoke of insurance to him at our first meeting which was in the fall of 1891.

Q. And you never let up on him until you had him insured?

A. No, sir, when we get a man on our list we generally work with him until he dies or we insure him.

Q. What was the amount of premium on this $50,000?

A. $2190.

Q. Did Mr. Florida pay that premium?

A. I took his note for the amount and paid the pre-
156 mium myself to the company.

Q. Did you collect the note?

A. Not from him, it was not due until after his death.

Q. In what amount was the note given?

A. Ninety days, four months and one six months.

Q. And you never collected the amount from him before his death?

A. No, sir.

Q. Did you ever hear him say anything about letting any insurance lapse?

A. Yes, sir.

Q. What companies did he say he would let his policies lapse in?

A. In the Provident Life and Savings Association.

Q. What did he say was the matter with that policy?

A. He did not like the kind of policy as it run a certain number of years and then would be renewed at an increased rate.

Q. He did not care for that insurance?

A. No, sir, he said it would be more expensive in the long run than to carry it in a regular company.

Q. This $50,000. taken out of your company was payable to Mrs. Florida?

A. Yes, sir.

Q. And the company has paid her?

A. Yes, sir.

By Mr. Estes: Have you a suicide clause in your policies?

A. No, sir, we have run without it since 1859.

Q. You have no such clause in your policies?

A. No, sir.

William E. Storer, being called and sworn testified on the part of the plaintiff in rebuttal as follows:

Judge Adams: What is your business?

A. I am engaged in the life insurance business.

157 Q. With what company are you connected?

A. With the Provident Savings and Life Association.

Q. In what capacity?

A. I am the general agent.

Q. Did your Company have any transactions with Mr. A. K. Florida by which you issued some policies on his life?

A. Yes, sir.

Q. About when was that?

A. The first policy was taken out in 1890 and was for $5000. In 1891 two other policies were taken out for $5,000. each making a total of $15,000.

Q. The premiums were paid on those policies for how long?

A. They were paid up to 1893.

Q. What month in 1893?

A. January or February I think.

Q. In January or February, 1893 when the premiums were due on those policies did you go to see Mr. Florida about it?

A. Yes, sir.

Q. What did he say?

A. He said he was in financial straights or other and did not have the money to keep them up or he would renew them or something like that.

Q. How often did you go to see him in order to try to get him to pay those premiums?

A. I think once or twice.

Q. What was the amount of the premium that it would have been necessary to pay in order to keep those policies alive?

A. I cannot tell exactly.

Q. Look at the policies and see if you can tell?

A. Yes, $79.40.

Q. If he had paid $79.40 in January or February, 1893 those policies would have been kept alive and would have remained in force for another year?

A. Yes, sir.

Q. But that amount he refused to pay?

A. Yes, sir.

Q. Your Insurance Company is in a solvent condition?

A. Yes, sir, we have never failed to pay a policy?

158 Q. So there was no trouble on account of the weakness of the Company?

A. None whatever.

Q. You have been engaged in the life insurance business for a number of years here in the city?

A. Yes, sir.

Q. Is it anything unusual for a man doing a large business in the City of St. Louis to carry from fifty to one hundred thousand of life insurance?

A. No, sir, a number of them carry that.

Q. Your company is still in existence?

A. Yes, sir.

Q. And is perfectly solvent?

A. Yes, sir.

Q. You never heard its solvency questioned and never failed to pay a loss?

A. No, sir.

Cross-examination waived.

R. E. Snow, being called and sworn testified on the part of the plaintiff in rebuttal as follows:

Direct-Examination

By Mr. Wilfley.

Q. State your full name?

A. R. E. Snow.

Q. What is your business?

A. I am a life insurance agent.
Q. Did you know Mr. Florida?
A. Yes, sir.
Q. Did you ever have any business transactions with him?
A. Yes, sir.
Q. What time was that?
A. May, 1892.
Q. What Company were you with at that time?
A. I was a special agent of the Mutual Life Insurance Company of New York at that time.
Q. Did you write any insurance for Mr. Florida in
159 May, 1892?
A. Yes, sir.
Q. How much?
A. $250,000.
Q. Do your policies contain what is called the suicide clause?
A. Yes, sir.
Q. Did you make any further efforts to write any more insurance on Mr. Florida's life?
A. Yes, sir.
Q. When?
A. In December, 1892.
Q. Did Mr. Florida ever solicit life insurance in your company?
A. No, sir, never.
Q. You tried to write further insurance for him in December, 1892?
A. Yes, sir.
Q. In securing that policy that the company issued in May, 1892, did you solicit that insurance?
A. Yes, sir.
Q. Mr. Florida never approached you on the subject?
A. No, sir, never.
Q. How often did you see him before you succeeded in getting his application?
A. A half dozen times or more.
Q. Did he seem to be eager to have the policy issued?
A. No, sir, we never find them that way.
Q. He refused to take any further insurance in December 1892?
A. Yes, sir.

Cross-Examination

By Mr. Estes.

Q. Do you know, Mr. Snow, that this policy was issued for the benefit of his estate?

A. I do not know that it was written for the benefit of his estate although I believe it was. I would not be positive about it though.

Q. Do you know why he wanted it written for the benefit of his estate?

A. No, sir, I never asked him why he wanted it that way.

160 Daniel C. Tevis being called and sworn testified on the part of the plaintiff in rebuttal as follows:

Direct-Examination

By Mr. Willley.

Q. What is your business?
A. I am a life insurance agent.
Q. How long have you been in the business?
A. Seven years.
Q. How long in St. Louis, here?
A. Four years.
Q. Did you know Mr. Florida?
A. Yes, sir.
Q. How long did you know him prior to his death?
A. Possibly two years.
Q. Did you ever have any business transactions with him?
A. I tried to write some insurance for him.
Q. What time was that?
A. January, 1893.
Q. What Company did you represent?
A. The Covenant Mutual Life Insurance Company.
Q. When was that?
A. That was January, 1893.
Q. How much did you want him to take out at that time?
A. I tried to write him for $10,000. which is the limit of the Company on one life.
Q. Did you do all you could to induce him to take that insurance?
A. I certainly did.
Q. Could he have secured that insurance from your Company?
A. He certainly could if he could have passed the examination.
Q. Your Company limits the amount they will write for any one person for $10,000?
A. Yes, sir.
Q. And that amount you tried to write for Mr. Florida?
A. Yes, sir.

Cross-Examination

By Mr. Estes.

Q. What Company do you represent?
A. I represent the Covenant Mutual.
161 Q. Is that a local Company?
A. Yes, sir, the head office is here in St. Louis.
Q. Is that an assessment company?
A. No, sir, it is a regular company like the New York Mutual Life or the Aetna.
Q. What is the surplus of your company?
A. $75,000.
Q. What is the surplus of the New York Mutual Life?

Objected to as incompetent, immaterial and irrelevant.

Objection sustained.

Defendant's counsel then and there excepted to the ruling of the Court at the time.

Charles Hewitt being called and sworn testified on the part of the plaintiff in rebuttal as follows:

Direct-Examination

By Mr. Wilfley.

Q. What is your name?
A. Charles Hewitt.
Q. Where do you live?
A. 4210 West Bell.
Q. How long have you lived here?
A. Forty years.
Q. Did you know the late Alonzo K. Florida?
A. Yes, sir.
Q. How long did you know him?
A. Three or four years.
Q. Did you have any business transactions with him?
A. Yes, sir.
Q. When?
A. I think it was in 1891.
Q. What was the nature of those transactions?
A. I sold him several pieces of property.
Q. You sold him some property and had transactions with him in real estate?
A. Yes, sir.
Q. Did you have any other transactions with him?
A. Yes, sir, I loaned him money at times.
162 Q. What kind of a man did you find Mr. Florida with reference to his method of transacting business?

A. I found him to be a man to meet his obligations promptly.

Q. Was Mr. Florida a prosperous business man during 1891 and 1892?

A. He appeared to be, yes, sir. He paid his debts promptly and I always regarded him as a good business man.

Q. Do you remember what amount you loaned to him?

A. I let him have $5,000 once on $7500 security and that was paid when due.

Q. Do you remember the last time you saw him?

A. I believe the last time I saw him was shortly after his son died.

Q. Did you notice any change in his condition?

A. He appeared to be very much depressed is all the change I saw in him.

Q. On account of the loss of his son?

A. Yes, sir.

Q. You had no business transactions with him at that time?

A. No, sir.

Cross-Examination Waived.

Judge Adams: I want to offer in evidence the deed that I showed to Mr. George and I want the jury to take it and inspect it. I call especial attention to the erasure of the name that the evidence discloses was that of J. G. Calkins and the substitution therefor of the names of Christian and Wonderly. Mr. George identified the deed and I would like to make a formal offer of it now.

Objected to as incompetent, immaterial and irrelevant.

The Court: I don't see how that is competent. I will sustain the objection.

Plaintiff's counsel then and there excepted to the
163 ruling of the Court at the time.

This was all the testimony offered.

Whereupon the defendant asked the Court to charge the jury as follows:

(Charge offered by Defendant.)

The jury are instructed that the main question in this case for their consideration is that of—fraud. That the defendant is not bound to prove fraud directly but that it may be inferred from the surroundings, circumstances and actions of a party.

The theory of the defense is that the purpose of Florida in obtaining the insurance was to cheat and defraud the company. In support of that position evidence that he obtained insurance upon his life in other companies for a like fraudulent purpose can be taken into consideration by the jury. A repetition of the acts of the same character, naturally indicates the same purpose in all of them, and if, when considered, they cannot be reasonably explained without ascribing a particular motive to the perpetrator, such motive will be considered as prompting each act.

In the case at bar if the jury find that Florida intentionally misstated in his application to the defendant company with reference to the causes of the deaths of his father and mother and their ages—that he intentionally misrepresented the amount of insurance, he had in other companies and intentionally misrepresented the facts as to his health, all these things you may take into consideration, in determining his intention of defrauding the defendant when he took out his policies. And if you further find from the evidence that he was engaged in a number of fraudulent deals in real estate and was fearful of criminal prosecutions in consequence thereof, and
164 said that he would rather kill himself than be imprisoned, and if you further find that he commenced and acted systematically in taking out insurance upon his life and that he did take out a large amount of insurance within a short period of time, and if you believe from all the evidence that his preconceived purpose was to defraud the insurance company, then you have a right to infer that at the time of taking out the two policies in this suit that he intended to commit suicide at the times he made application for insurance.

Whereupon the Court refused to give the charge asked for by defendant: to which action of the court in refusing to give said charge defendant's counsel then and there excepted at the time.

Whereupon the Court on its own motion charged the jury.

(Charge to the Jury.)

Gentlemen of the Jury:

The plaintiff in this case seeks to recover upon two separate policies of life insurance issued upon the life of her husband, Alonzo K. Florida, at his instance, and for her benefit, by the defendant company.

One of these policies is dated July 30th, 1891 and is for the sum of $5,000 The other is dated July 12th, 1892, and is for the sum of $10,000. These being separate contracts of insurance and each standing independent of the other, plaintiff

was required to set forth her claim under them separately in her petition and these separate statements are called "counts."

The first count relates to the policy dated July 30th, 1891 for $5,000, and the second count relates to the policy dated July 12th, 1892 for $10,000.

165 The issue of fact which you are to determine, and which I will presently define for you, is the same with respect to each count of the petition and while the issue is the same, your finding upon that issue with respect to each count need not necessarily be the same.

You may for instance find for the plaintiff upon the first count and for the defendant upon the second count or you may find for the plaintiff on both counts or for the defendants on both counts.

You must however return a separate verdict with respect to each count, that is a separate finding upon each of the two counts.

The defendant insurance company concedes these policies of insurance to be valid, and concedes plaintiff's right to recover upon them, unless at the time Alonzo K. Florida made application for them, he was in contemplation of committing suicide at some future time, so that by such acts of self-destruction, the insurance company would be defrauded of the sum so insured, for the benefit of the person named in said policy.

Now in view of the wide scope which the testimony has taken, in view of its nature, being largely circumstantial, I feel called upon to impress upon your attention the single issue which you are to determine, that is, whether there was a matured well formed purpose at the time these applications were made to commit suicide in order that the beneficiaries might realize the sums mentioned in the policies. The burden of sustaining the issue as stated of such contemplated purpose on the part of Alonzo K. Florida, at the respective times he applied for and procured these policies of insurance, devolves upon the defendant.

The fact of suicide is no defense unless it be the culmination of a purpose formed at the time application was made
166 for the respective policies.

Unless, therefore, you believe from the weight of the evidence that on the 30th day of July, 1891, at the time of making application for the policy at that date, Alonzo K. Florida contemplated thereafter committing suicide and thereby enabling his wife to collect the amount named in the

policy, then your verdict upon the first count must be for the plaintiff.

If upon the other hand you believe that such purpose existed at the time of making such application, then your verdict must be for the defendant.

Unless you believe from the weight of the evidence that on the 12th day of July 1892, at the time of making application for the policy of insurance of that date, Alonzo K. Florida, did so, with the contemplated well formed purpose of thereafter committing suicide and thereby enabling his wife to collect the amount named in the policy, your verdict must be for the plaintiff upon the second count of the petition.

If upon the other hand you believe that such purpose existed at the time such application was made, then your verdict must be for the defendant.

The fact, if from the evidence you believe it to be a fact that Alonzo K. Florida, committed suicide constitutes in itself no defense on the part of the insurance companies under this clause.

In order to make a defense out of such fact you must believe from the preponderance of the evidence, that Alonzo K. Florida, at the time he made application for either or both of the policies of life insurance involved in this suit, contemplated suicide and by contemplated is meant there was a complete well formed purpose of taking his own life and that purpose culminated by actually killing himself with a
167 view and for the purpose of defrauding the defendant company out of the money stipulated in the policy to be paid.

While the alleged purpose of Florida at the time of making application for policies in this suit to commit suicide may be proven from circumstances or may be inferred from facts and circumstances in evidence, such assumptions or conjectures must have a reasonable foundation in fact and must be a reasonable and intelligent inference from the fact proven.

You are instructed that a suicidal purpose is not to be presumed and the burden of proving it rests upon the party alleging it, which therefore would be the defendant's in this case and while it need not be shown by direct and positive evidence but may be proven by facts and circumstances indicative thereof, still mere matters of suspicion are not sufficient to satisfy the mind of its existence and should never be imputed, when the facts and circumstances on which it is predicated are mere matters of suspicion.

You are instructed under the pleadings and evidence in this case that if you believe that Alonzo K. Florida, at the time of making application for the $5,000 policy of insurance misstated either the facts with reference to his father's or his mother's age or the amount of insurance then existing upon his life or the facts in relation to the cause of the death of his father or mother, that neither one of such statements constitutes any defense to this action, as set forth in the first count of the petition, and if you believe that in making the second application for the policy of insurance of ten thousand dollars, he misrepresented either one of the facts, hereinbefore mentioned with reference to the $5,000 policy, that such misstatements in itself constitutes no defense against the action of the
168 plaintiff under the second count of the petition for $10,000.

If you find for the plaintiff on the first count of the petition, you should find a verdict in the sum of $5,000 together with interest on that sum from and after the 19th day of October, 1893, to this date, at the rate of six per cent per annum.

If you find for the plaintiff on the second count of the petition, you should find a verdict in the sum of Ten thousand dollars, together with interest on that sum from and after the 19th day of October, 1893, until this date at the rate of six per cent per annum.

The defendant, before the jury had retired from the box, objected and excepted to that part of the Court's charge to the jury in this case, which is as follows:

First. "Now, in view of the wide scope which the testimony has taken, in view of its nature, being largely circumstantial, I feel called upon to impress upon your attention the single issue which you are to determine, that is, whether there was a matured, well formed purpose at the time these applications were made to commit suicide in order that the beneficiaries might realize the sums mentioned in the policies. The burden of sustaining the issue of such contemplated purpose on the part of Alonzo K. Florida at the respective times he applied for and procured these policies of insurance, devolves upon the defendant."

Defendant also at same time and in same manner, objected to and excepted to that part of the Court's charge to the jury in this case, which is as follows:

Second. "The fact of suicide is no defense unless it
169 be the culmination of a purpose formed at the time application was made for the respective policies. Unless, therefore, you believe from the weight of the evidence

that on the 30th day of July, 1891, at the time of making application for the policy of that date, Alonzo K. Florida contemplated thereafter committing suicide and thereby enabling his wife to collect the amount named in the policy, then your verdict upon the first count must be for the plaintiff. If upon the other hand you believe that such purpose existed at the time of making such application, then your verdict must be for defendant."

Defendant, before the jury had retired from the bar of the Court, excepted to that part of the Court's charge to the jury, which is as follows:

Third. "Unless you believe from the weight of the evidence that on the 12th day of July, 1892, at the time of making application for the policy of insurance of that date, Alonzo K. Florida did so, with the contemplated, well formed purpose of thereafter committing suicide, and thereby enabling his wife to collect the amount named in the policy, your verdict must be for plaintiff upon the second count of the petition. If, upon the other hand, you believe that such purpose existed at the time such application was made, then your verdict must be for the defendant."

Defendant in the presence of the jury, and before the jury had retired, objected and excepted to that part of the Court's charge to the jury, which is as follows:

Fourth. "The fact, if from the evidence you believe it to be a fact, that Alonzo K. Florida committed suicide constitutes in itself no defense on the part of the Insurance Company under this clause.

In order to make a defense out of such fact, you must
170 believe from the preponderance of evidence that Alonzo K. Florida, at the time he made application for either or both policies of life insurance involved in this suit, contemplated suicide, and by contemplated is meant that there was a complete well formed purpose of taking his own life, and that purpose culminated by actually killing himself with a view and for the purpose of defrauding the defendant company out of the money stipulated in the policies to be paid."

And the defendant, before the jury had retired from the box, and in the presence of the jury, excepted to that part of the Court's charge to the jury in this case, which is as follows:

Fifth. "You are instructed that a suicidal purpose is not to be presumed, and the burden of proving it rests upon the party alleging it, which therefore would be the defendant in this case, and while it need not be shown by direct and positive evidence, but may be proven by facts and circumstances

indicative thereof, still mere matters of suspicion are not sufficient to satisfy the mind of its existence, and should never be imputed when the facts and circumstances on which it is predicated are mere matters of suspicion."

The above constitute all of the instructions given by the Court in this cause.

Under the instructions of the court, the jury found a verdict for plaintiff upon both counts in the petition, with interest.

And on the 6th day of October, 1894, and within four days after the rendering of said verdict, the defendant filed its motion for a new trial, which is as follows:

171 (MOTION FOR NEW TRIAL.)

United States of America,
East. Div. of the East. Dist. Mo.

In the Circuit Court, Sept. Term, 1894.

Nancy L. Florida
vs.
Aetna Life Ins. Co. Defendant.

Comes now the defendant and moves the Court to set aside the verdict of the jury heretofore rendered in above styled cause and grant defendant a new trial and as grounds for such motion assigns the following:

The verdict was against the law.

The verdict was against the evidence and the weight of evidence.

The Court misdirected the jury in its instructions.

The Court rejected proper evidence offered by defendant and admitted improper evidence offered by plaintiff.

The Court erred in its instructions to the jury.

FRANK M. ESTES,
Atty. for Deft.

Which said motion the Court, on the 13th day of October, 1894, overruled, to which ruling and order of the Court the defendant then and there duly excepted at the time, and time being given to prepare the same, the defendant tenders this, its Bill of Exceptions, to the Court, containing all of the evidence in this cause, and all of the instructions given by the

Court, and all of the rulings and exceptions made and taken in said cause, and prays that same may be signed by
172 the Court and ordered to be filed and made a part of the record in this cause, which is accordingly done.

[Signed] HENRY S. PRIEST,
Judge, &c.

Indorsed.—"3791. Florida vs. Aetna Life Ins. Co. Bill of Exceptions. Filed Jan. 9, 1895. T. L. Crawford, Clerk."

And afterwards, to-wit: on the fifth day of February, A. D. 1895, the following further proceedings were had and appear of record in said cause, to-wit:

(Assignment of errors & petition for writ of error filed; writ of error allowed; citation signed; bond approved).

Nancy L. Florida, Plaintiff,
3791. vs.
Aetna Life Insurance Company, Defendant.

Now comes defendant by attorney and files an assignment of errors and also files a petition for writ of error to remove this cause to the United States Circuit Court of Appeals and presents to the Court a citation, citing and admonishing the said plaintiff to be and appear at said Circuit Court of Appeals within sixty days from this date; which said writ of error is allowed and said citation signed by the Judge, and thereupon defendant presents to the Court its bond in the penal sum of Eighteen thousand dollars, which bond is approved by the Court and ordered to be filed and made a part of the record herein, and to act as a supersedeas and stay proceedings upon the judgment herein.

173 Said Assignment of Errors is in words and figures following, to-wit:

(ASSIGNMENT OF ERRORS.)

In the Circuit Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri.

September Term, 1894.

Nancy L. Florida
vs.
The Aetna Life Insurance Company.

Now comes the defendant The Aetna Life Insurance Com-

pany by its attorney, and says that in the foregoing records and proceedings there is manifest error in this, to-wit:

1. The verdict was not sustained by sufficient evidence, and was against the weight of the evidence.

2. The verdict was contrary to law.

3. The error of the Court in sustaining an objection of the plaintiff's attorney to the following question asked Dr. Gordon:

Q. "Did he (Florida) defraud you in any of these transactions?" And also,
Q. "Did Mr. Florida ever defraud you in any manner?"

Objected to as incompetent and immaterial, and objection sustained.

4. Error of the Court in sustaining an objection of the plaintiff's counsel to the following questions asked witness C. P. Wonderly:

Q. "Did you know anything about any of his (Florida's) transactions, in which he executed deeds of trust on
174 certain pieces of property and afterwards sold the notes and deeds of trust and then had the deeds of trust released on the record, and executed others on the same property on which he borrowed money?"
A. "I never knew anything about that except what was found out after his death."
Q. "What did you find out after his death with reference to that fact?"
A. "Well, I only know what I heard about it."
Q. "What was said about that matter?"

Objected to as incompetent, and objection sustained.

5. Error of the Court in sustaining an objection of the plaintiff's counsel to the following question asked witness W. C. Stewart:

Q. "Do you know, of your own knowledge, the contents of that application relating to the age of the father and mother, and to the causes of the death of his parents?"
A. "Yes, sir."
Q. "What does it state in that regard?"

Objected to and objection sustained.

6. Error of the Court in passing upon an objection offered by plaintiff's counsel to a question asked witness Gilbert J. George, and the remark of the Court to this effect:

The Court: "I will overrule the objection, for I think it is for the jury to say what weight shall be given testimony; we will take the testimony for what it is worth."

7. Error of the Court in sustaining an objection of the plaintiff's counsel to the following question asked witness Gilbert J. George:

Q. "Do you know what Mr. Florida's financial condition was in January, 1893?"

175 Objected to and objection sustained.

8. Error of the Court in sustaining an objection to a question asked witness George, as follows:

Q. "Did you have any conversation with him at the house when Mrs. Florida was present?"
A. "I don't think I had a conversation with the two together, but I did talk with Mrs. Florida about the policies of insurance."
Q. "What did she say?"

Objected to.

The Court: "What bearing would that have on the subject, anyway?"

Objection sustained.

9. Error of the Court in sustaining an objection of the plaintiff's counsel to the following question asked witness George:

Q. "Did he ever say to you, or state to you, or talk to you about having trouble with certain people in town here?"

Objected to and objection sustained.

10. Error of the Court in sustaining an objection of the plaintiff's counsel to the following questions asked witness George:

Q. "Did Mr. Florida ever speak to you, at any time, and if so at what time, of anything with reference to any trouble he was having with parties with whom he was dealing?"

Objected to, and objection sustained.

Q. "Do you know, Mr. George, whether or not any people were threatening Florida with prosecution in this city because of his fraudulent transactions with them?"

Objected to, and objection sustained.

11. Error of the Court in sustaining an objection of
176 the plaintiff's counsel to the following question asked witness George:

Q. "Don't go into the matter of that settlement. My question is, did he say anything about committing suicide about that time?"

Objected to, and objection sustained.

12. Error of the Court in sustaining an objection of the plaintiff's counsel to the following questions asked witness George:

Q. "What was his financial condition at that time, Mr. George?"
A. "Well, he was seriously—."

Objected to, and objection sustained.

13. Error of the Court in sustaining an objection of the plaintiff's counsel to the following question asked witness George:

Q. "When he turned over this property, did you know anything about these fraudulent transactions, and were they taken into consideration in figuring out his equities?"
A. "I guess there must have been a hundred of those, and they were not considered at that time."

Motion made by plaintiff's counsel to strike out the answer, and motion sustained.

14. Error of the Court in sustaining objection of plaintiff's counsel to the following question asked witness William A. Ellis:

Q. "I will ask you to look at this paper and state to the Court and the jury what it is?"
A. "This is the original application made by Mr. Florida for insurance in our company, bearing date of November 10th, 1890."

The defendant's counsel offers application in evidence stating that it has a bearing upon the point as to misrepre-
177 sentation as to the causes of the deaths of the father and mother and their respective ages.

Objected to by plaintiff's counsel, and objection sustained.

15. Error of the Court in sustaining an objection of the plaintiff's counsel to the following question asked witness B. F. Hammett:

Q. "Do you know what his financial condition was during the winter of 1892, and the beginning of 1893?"

Objected to, and objection sustained.

16. Error of the Court in ruling out the purported will of the late A. K. Florida.

17. Error of the Court in ruling out the following offers of testimony made by defendant's counsel:

William Schoenfeld, Deputy Clerk of the Probate Court, produced in court the book in which is recorded the abstracts of the demands against estates; and the offer of defendant's counsel as follows:

"I will offer in evidence the record of demands in the Probate Court against the estate of A. K. Florida, deceased, showing the amounts which have been allowed up to the September Term, 1894."

This offer was made for the purpose of showing Florida's financial condition at the time these transactions took place.

"And I further offer, in the same connection, the records showing the contested claims against said estate."

Objections made by counsel for plaintiff, and sustained.

18. Error of the Court in sustaining an objection
178 of the plaintiff's counsel to the following questions asked witness John R. Christian:

Q. "When did you discover about his fraudulent transactions?"

Objected to, and objection sustained.

"Do you know, of your own knowledge, of any fraudulent transaction in which Florida was engaged?"

Objected to, and objection sustained.

Q. "Did you find out anything about any fraudulent transactions that he had been engaged in in 1891?"

A. "I cannot say that, Mr. Estes, as a matter of my own absolute knowledge."

Q. "What is the general reputation in that regard here in the city. The general repute in regard to that matter?"

Objected to.

The Court: "You cannot establish the fact of any fraudulent transactions by that sort of evidence. I will sustain the objection."

Mr. Estes: "May I inquire of the Court, do I understand that you sustain the objection on account of the form of the question, or does your ruling go to the substance? I can prove fraudulent transactions running back as far as 1891, and as this was a matter of common notoriety, it is not a question of one man's opinion, but every man's opinion."

The Court: "I could not let a matter of that kind go to the jury on that sort of testimony."

19. Error of the Court in sustaining an objection of the plaintiff's counsel to the following question asked witness Christian:

Q. "Do you know how far back these fraudulent
179 transactions extend?"

A. "I only know what I have heard. Of my own personal knowledge I could not tell you that there were any fraudulent transactions. I only know what others have told me."

Judge Adams: "I object to his stating that."

The Court: "The objection is sustained."

20. Error of the Court in sustaining an objection to the following question asked witness Henry M. Noel:

Q. "What was the amount of those bogus notes you spoke of?"

Judge Adams: "In view of the witness' statement that he never held any of these so-called fraudulent notes more than sixty days prior to Mr. Florida's death, I object to that question as being immaterial."

And objection sustained.

21. The Court erred in giving the following instruction on its own motion:

First. "Now, in view of the wide scope which the testimony has taken, in view of its nature, being largely circumstantial, I feel called upon to impress upon your attention the single issue which you are to determine, that is, whether there was a matured, well formed purpose at the time these applications were made, to commit suicide in order that the beneficiaries might realize the sums mentioned in the policies. The burden of sustaining the issue of such contemplated pur-

pose of the part of Alonzo K. Florida at the respective times he applied for and procured these policies of insurance, devolves upon the defendant."

22. The Court erred also in giving the following instruction on its own motion:

Second. "The fact of suicide is no defense unless it be the culmination of a purpose formed at the time application was made for the respective policies. Unless, therefore, you believe from the weight of evidence that on the 30th day of July, 1891, at the time of making application for the policy of that date, Alonzo K. Florida contemplated thereafter committing suicide, and thereby enabling his wife to collect the amount named in the policy, then your verdict upon the first count must be for the plaintiff. If, upon the other hand, you believe that such purpose existed at the time of making such application, then your verdict must be for the defendant."

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23. The Court erred in giving the following instructions on its motion:

Third. "Unless you believe from the weight of the evidence, that on the 12th day of July, 1892, at the time of making application for the policy of insurance of that date, Alonzo K. Florida did so, with the contemplated, well formed purpose of thereafter committing suicide, and thereby enabling his wife to collect the amount named in the policy, your verdict must be for the plaintiff upon the second count of the petition. If, upon the other hand, you believe that such purpose existed at the time such application was made, then your verdict must be for the defendant."

24. The Court also erred in giving the following instruction on its own motion:

Fourth. "The fact, if from the evidence you believe it to be a fact, that Alonzo K. Florida committed suicide constitutes in itself no defense on the part of the Insurance Company under this clause.

In order to make a defense out of such fact, you must believe from the preponderance of evidence that Alonzo K. Florida, at the time he made application for either or both policies of life insurance involved in this suit, contemplated suicide, and by contemplated, is meant that there was a complete, well formed purpose of taking his own life, and that purpose culminated by actually killing himself, with a view and for the purpose of defrauding the defendant company out of the money stipulated in the policies to be paid."

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25. The Court erred in giving the following instruction on its own motion:

Fifth. "You are instructed that a suicidal purpose is not to be presumed, and the burden of proving it rests upon the party alleging it, which therefore would be the defendant in this case, and while it need not be shown by direct and positive evidence, but may be proven by facts and circumstances indicative thereof, still mere matters of suspicion are not sufficient to satisfy the mind of its existence, and should never be imputed when the facts and circumstances on which it is predicated are mere matters of suspicion."

26. The Court erred in refusing to instruct the jury, at the request of the defendant, as follows:

"The Court instructs the jury that the main question in this case is one of fraud. That the defendant is not bound to prove fraud directly, but that it may be inferred from the surroundings, circumstances and actions of a party.

The theory of the defense is that the purpose of Florida in obtaining the insurance was to cheat and defraud the company. In support of that position evidence that he obtained insurance upon his life in other companies for a like fraudulent purpose can be taken into consideration by the jury. A repetition of the acts of the same character naturally indicates the same purpose in all of them, and if, when considered,
they cannot be [reasonable] explained without ascrib-
182 ing a particular motive to the perpetrator, such motive
will be considered as prompting each act. In the case at bar if the jury find that Florida intentionally misstated in his applications to the defendant company with reference to the causes of the deaths of his father and mother and their ages, that he intentionally misrepresented the amount of insurance he had in other companies, and intentionally misrepresented the facts as to health, all these things you may take into consideration in determining his intention of defrauding the defendant when he took out his policies. And if you further find from the evidence that he was engaged in a number of fraudulent deals in real estate and was fearful of criminal prosecution in consequence thereof, and said that he would rather kill himself than be imprisoned, and if you further find that he commenced and acted systematically in taking out insurance upon his life and that he did take out a large amount of insurance within a short period of time, and if you believe from all the evidence that his preconceived purpose was to defraud the insurance company, then you have a right to infer that at the time of taking out the two policies in this suit that he intended to commit suicide at the times he made application for insurance."

Wherefore, and for divers other errors apparent on the face of this record, plaintiff in error, The Aetna Life Insurance Company, prays that the aforesaid proceedings be reversed.

FRANK M. ESTES,
Attorney for Plff. in Error and Defendant herein.

Indorsed.—"3791. Florida vs. Aetna Life. Assignment of Errors. Filed Feb. 5, 1895. T. L. Crawford, Clerk."

183 Said Petition for Writ of Error is in words and figures following, to-wit:

(PETITION FOR WRIT OF ERROR.)

In the Circuit Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri.

September Term, 1894.

Nancy L. Florida
vs.
The Aetna Life Insurance Company.
Court of the Eastern District of Missouri:

To the Hon. H. S. Priest, Judge of the United States Circuit Court of the Eastern District of Missouri:

The Aetna Life Insurance Company, defendant in the above entitled case, respectfully prays that a writ of error be allowed in the above entitled cause, and that the Clerk of the United States Circuit Court for the Eastern District of Missouri be directed to send the records and proceedings in said cause, and all things concerning and appertaining to the same, to the United States Circuit Court of Appeals for the Eighth Circuit, in order that the errors complained of in the said defendant's assignment of errors herewith filed may be reviewed, and, if error be found, corrected according to the laws and customs of the United States.

FRANK M. ESTES,
Atty. for Defendant.

Indorsed.—"3791. Florida vs. Aetna Life Co. Petition for writ of error. Filed Feb. 5, 1895. T. L. Crawford, Clerk."

184 Said Appeal Bond is in words and figures following, to-wit:

(APPEAL BOND.)

Know all Men by These Presents, That we, The Aetna Life Insurance Company and the St. Louis Trust Company are

held and firmly bound unto Mrs. Nancy L. Florida in the full and just sum of eighteen thousand dollars, to be paid to the said Nancy L. Florida, her heirs, executors, administrators or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 30th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas, lately at the September term, A. D. 1894, of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri in a suit depending in said Court between Nancy L. Florida plaintiff and The Aetna Life Insurance Co., defendant judgment was rendered against the said Aetna Life Insurance Co., and the said Aetna Life Insurance Co., has obtained a writ of error of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Nancy L. Florida citing and admonishing said Nancy L. Florida to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Paul, Minnesota, sixty days from and after the date of said Citation.

Now the Condition of the above Obligation is such, That if the said Aetna Life Insurance Company shall prosecute said writ of error to effect, and answer all damages and costs if it shall fail to make good its writ of error plea, then the above obligation to be void, else to remain in full force and virtue.

185 AETNA LIFE INS. CO., [Seal]
J. L. ENGLISH, Sec. [Seal]
ST. LOUIS TRUST COMPANY, [Seal]
By THOS. H. WEST, Prest. [Seal]
Attest: JOHN D. FILLEY, Secy. [Seal]

Sealed and Delivered in Presence of
H. S. McCREARY,
F. W. BIDWELL,
WM. H. KELLOGG.

Approved by HENRY S. PRIEST, Judge.

Indorsed.—"3791. United States Circuit Court, E. Div. of Eastern Jud. District of Missouri. Nancy L. Florida vs. Aetna Life Ins. Co. Bond on writ of error. Filed 5th day of Feby, 1895. T. L. Crawford, Clerk."

186 United States of America,
Eastern Division of the Eastern Judicial District of Missouri—ss.

I, T. L. Crawford, Clerk of the Circuit Court of the United

States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in Case No. 3791, of Nancy L. Florida, Plaintiff, against Aetna Life Insurance Company, Defendant, as fully as the same remain on file and of record in said case in my office and that the original writ of error and citation are hereto attached and herewith returned.

Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District Missouri.

In witness whereof, I hereunto subscribe my name and affix the seal of said Court, at office in the City of St. Louis, in the Eastern Division of said District, this first day of April, in the year of our Lord, eighteen hundred and ninety-five.

T. L. CRAWFORD,
Clerk of said Court.

By JAMES R. GRAY, Deputy.

Filed Apr. 1, 1895. John D. Jordan, Clerk.

And on the first day of April, A. D. 1895, an appearance of counsel for plaintiff in error was filed in the Clerk's office of said Circuit Court of Appeals, in the words and figures following:

United States Circuit Court of Appeals,

Eighth Circuit.

No. 624. May Term, 1895.

Aetna Life Insurance Company,
Plaintiff in Error,

vs.

Nancy L. Florida.

The Clerk will enter my appearance as counsel for the plaintiff in error.

FRANK M. ESTES.

Endorsed—"U. S. Circuit Court of Appeals, Eighth Circuit. May Term, 1895. No. 624. Aetna Life Ins. Co., Plaintiff in Error, vs. Nancy L. Florida. Appearance. Filed April 1, 1895. John D. Jordan, Clerk. Frank M. Estes. St. Louis, Mo., counsel for Plaintiff in Error."

And on the 9th day of May, A. D. 1895, an appearance of counsel for defendant in error was filed in the clerk's office of said Circuit Court of Appeals, in the words and figures following:

United States Circuit Court of Appeals.

Eighth Circuit.

No. 624. May Term, 1895.

The Aetna Life Insurance Company,
Plaintiff in Error,

vs.

Nancy L. Florida.

The Clerk will enter our appearance as counsel for the defendant in error.

ELMER B. ADAMS,
L. R. WILFLEY,

Endorsed—"U. S. Circuit Court of Appeals, Eighth Circuit. May Term, 1895. No. 624. The Aetna Life Ins. Co., Plaintiff in Error, vs. Nancy L. Florida. Appearance. Filed May 9, 1895. John D. Jordan, Clerk. Elmer B. Adams, L. R. Wilfley, St. Louis, Mo., counsel for Defendant in Error."

And on the 7th day of June, A. D. 1895, in the record of the proceedings of said Circuit Court of Appeals is an entry in said cause in the words and figures following, to-wit:

United States Circuit Court of Appeals,

Eighth Circuit. May Term, 1895.

Friday, June 7, 1895.

The Aetna Life Insurance Company,
Plaintiff in Error.
vs. No. 624.
Nancy L. Florida,
Defendant in Error.

In Error to the Circuit Court of the United States for the Eastern District of Missouri.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Frank M. Estes on behalf of the plaintiff in error, and the hour of adjournment having arrived before the conclusion thereof, further argument was postponed until to-morrow morning.

And on the 8th day of June, A D. 1895, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause in the words and figures following, to-wit:

United States Circuit Court of Appeals.

Eighth Circuit. May Term, 1895.

Saturday, June 8, 1895.

The Aetna Life Insurance Company,
Plaintiff in Error,
vs. No. 624.
Nancy L. Florida,
Defendant in Error.

In Error to the Circuit Court of the United States for the Eastern District of Missouri.

This cause coming on this day to be further heard, argument was continued by Mr. Frank M. Estes in behalf of the plaintiff in error, and by Mr. L. R. Wilfley in behalf of the defendant in error, and concluded by Mr. Frank M. Estes for the plaintiff in error. Thereupon this cause was submitted to the Court upon the transcript of record from said Circuit Court and the

briefs of counsel filed therein.

And on the 16th day of September, A. D. 1895, an opinion of said United States Circuit Court of Appeals was filed in said cause in the following words to-wit:

United States Circuit Court of Appeals.

EIGHTH CIRCUIT.

No. 624.—May Term, A. D. 1895.

The Aetna Life Insurance Company, Plaintiff in Error.
vs.
Nancy L. Florida, Defendant in Error.

In Error to the Circuit Court of the United States for the Eastern District of Missouri.

Mr. Frank Mr. Estes for the Plaintiff in Error.

Mr. L. R. Wilfley (Mr. W. F. Boyle and Mr. E. B. Adams were with him on brief) for the Defendant in error.

Before Caldwell, Sanborn and Thayer, Circuit Judges.

Thayer, J., delivered the opinion of the court.

This action was brought by Nancy L. Florida, the defendant in error, against the Aetna Life Insurance Company, the plaintiff in error, to recover the amount of two life insurance policies issued by said company on the life of Alonzo K. Florida, the plaintiff's husband. Both of said policies were made payable to the plaintiff as beneficiary. One of them was executed on July 30, 1891, for the sum of $5000, the other was executed on July 12, 1892, for the sum of $10,000. The plaintiff's husband committed suicide on April 27, 1893, and a demand was thereafter made on the defendant company for payment of the policies. Payment was refused and the present suit was thereupon instituted.

On the trial of the case the circuit court instructed the jury, in substance, that it was conceded by defendant company that the plaintiff was entitled to recover on the policies "unless at the time Alonzo K. Florida made application for them he was in contemplation of committing suicide at some future time, so that by such act of self-destruction the insurance company would be defrauded of the sum

so insured," and as no exception was taken to this instruction, we must assume, for the purpose of this decision, that the only defense intended to be relied upon by the defendant company was the defense pleaded in its answer as follows:

"Defendant states * * * * That on the 27th day of April, 1893, and within two years from the date of said policies, said Florida committed suicide; and the defendant alleges the fact to be that said Florida, at the time that he made his said applications to the defendant for said policies, contemplated suicide. That at the time of making said applications for said insurance, said Florida contemplated and intended to secure the said contracts of insurance from this defendant with the intention soon thereafter to take his own life. That the said purpose and intention of said Florida was not known to the defendant, and was purposely concealed by him in order that he might secure said policies of insurance and thereafter, by taking his own life, enable his representatives to secure the benefits accruing under said policies. That the said acts of said Florida were a fraud upon this defendant, and that by reason of said acts of said Florida, said policies of insurance became wholly void."

It should be stated in this connection that the policies in question were executed and delivered in the State of Missouri and that at the date of their execution the following statutes were in force in that State:

"No misrepresentation made in obtaining or securing a policy of insurance on the life or lives of any person or persons shall be deemed material, or render the policy void, unless the matter misrepresented shall have actually contributed to the contingency or event on which the policy is to become due and payable, and whether it so contributed in any case shall be a question for the jury." Rev. Stat. of Mo. 1889, Sec. 5849.

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void." Rev. Stat. of Mo. 1889, sec. 5855.

In the Circuit Court of the United States for the Eastern District of Missouri, where the case was tried, the plaintiff recovered a judgment for the full amount of the policies, and the case was brought to this court for review on a writ of error sued out by the defendant company.

The errors assigned relate the exclusion of testimony and to the charge of the trial court. There are numerous assignments of the former kind, but it would subserve no useful purpose to review them in detail, as most of the questions propounded, which were excluded, were obviously improper questions because they were calculated to elicit heresay or secondary evidence, or the conclusion of witnesses rather than the facts on which such conclusions were based, or because

the questions were designed to establish the existence of particular facts by common rumor, or because the questions asked were too vague and general or a mere repetition of questions that had already been asked and answered.

We shall forego any discussion of the several assignments of error to which the last remark applies, confining ourselves to those exceptions taken which seem to us to be most tenable.

At one stage of the trial counsel for the defendant company offered in evidence what purported to be the will of Alonzo K. Florida, deceased for the purpose, as stated by him at the time, of showing the condition of the testator's mind. It was objected to and excluded and the exception was saved. We cannot decided whether this ruling of the trial court was right or wrong, because the alleged will is not found in the bill of exceptions, and without examining it it is impossible to say what it may have tended to show with respect to the testator's purpose or mental condition. The defendant also appear to have offered in evidence a large number of claims which had been filed in the Probate Court of the City of St. Louis against the estate of Alonzo K. Florida. These were objected to, the claims were excluded, and an exception was saved. The claims in question appear to have been excluded because the circuit court was of opinion that they had no tendency to show the financial condition of the deceased at or prior to the taking out of the policies in suit. Whether that ruling was erroneous or otherwise cannot be determined, because the claims are not contained in the record. The ruling of the trial court must be presumed to have been correct. A witness for the defeneant company was also asked the following question: "What was Mr. Florida's financial condition during the winter of 1892 and 1893? I will put it this way, do you know what his financial condition was during the winter of 1892 and the beginning of 1893?" The answer to this interrogatory was excluded on the ground that it could have no tendency to show the financial condition of the deceased in July, 1891, and in July 1892, when the policies were taken out, and that no attempt had been made to furnish authentic evidence of his finacial condition at the latter dates. We cannot say there was any material error in this ruling, although the testimony would doutbtless have been competent and would probably have been admitted if counsel had undertaken to show that the indebtedness existing against the deceased in the winter of 1892 and 1893 had its origin prior to the issuance of the policies or either of them. Without pursuing this branch of the case at any greater length, it will be sufficient to say that none of the errors assigned on account of the exclusion of testimony appear to us to be tenable.

The question in the case of paramount importance is, whether the circuit court properly defined the words "contemplated suicide," as used in the Revised Statutes of Missouri, sec. 5855, *supra*. On this subject the court charged the jury as follows:

"The fact of suicide is no defense unless it be the culmination of a purpose formed at the time the application was made for the respective

policies. Unless, therefore, you believe from the weight of the evidence that on the 30th day of July, 1891. at the time of making application for the policy at that date, Alonzo K. Florida contemplated thereafter committing suicide and thereby enabling his wife to collect the amount named in the policy, then your verdict upon the first count must be for the plaintiff. * * * Unless you believe from the weight of the evidence that on the 12th day of July, 1892, at the time of making application for the policy of insurance of that date, Alonzo K. Florida, did so, with the contemplated well formed purpose of thereafter committing suicide and thereby enabling his wife to collect the amount named in the policy, your verdict must be for the plaintiff upon the second count of the petition. * * * The fact, if from the evidence you believe it to be a fact, that Alonzo K. Florida committed suicide constitutes in itself no defense on the part of the insurance companies under this clause. In order to make a defense out of such fact you must believe from the preponderance of the evidence, that Alonzo K. Florida, at the time he made application for either or both of the policies of life insurance involved in this suit, contemplated suicide and by contemplated is meant there was a complete well formed purpose of taking his own life and that purpose culminated by actually killing himself with a view and for the purpose of defrauding the defendant company out of the money stipulated in the policy to be paid."

The objection made to this part of the charge, and the only objection thereto, is, that the court declared that the word contemplated meant the same as the word intended. It is insisted that there is a material distinction between the words contemplated and intended, that the former word means "attentively considered"—"thought about," whereas the latter word signifies "a more determinative state of mind"—"a well formed purpose, and that the Legislature must be presumed to have used the word "contemplated" in the sense above suggested. The proposition maintained by the defendant company is thus concisely stated by its counsel:

"It was not necessary for the defendant to show that Florida effected this insurance with the deliberate purpose to commit suicide; it was sufficient to show that he was 'considering with attention' the project of suicide, and effected the insurance with the design that in case his contemplation should ripen into actual perpetration of suicide, then his beneficiaries should be provided for out of the proceeds of the insurance. * * * Hence it follows that the theory expressed throughout the several portions of the charge, bearing on this point, that 'contemplated suicide' meant a pre-determined, well-formed purpose of suicide, is erroneous, and those portions of the charge expressing this conception were erroneous."

It is no doubt true that the primary signification of the word contemplate is to consider attentively or to meditate; but it is equally true that a secondary meaning of the word is "to intend," and in ordinary conversation the word "contemplate" is frequently used as a

synonym for the word "intend," that is to express a well-formed purpose. Moreover, instances are not wanting where the word "contemplate has been held to be synonymous with the words "expect" or "intend." Thus, in *Buckingham, et al.* v *McLean*, 13 How. 151, 167, the words "in contemplation of bankruptcy" as used in the Bankrupt Act of 1841 (5 Stat. 442, ch. 9, sec. 2), were held to be tantamount to the expression expecting or intending to commit an act of bankruptcy. See also *Jones* v. *Howland*, 8 Metcalf (Mass.) 377.

We think, however, that the sense in which the Legislature intended to use the word "contemplated" in the statute now under consideration, can be best determined by considering the statute itself and the connection in which the word occurs. The statute was primarily designed to prevent the plea of suicide from being thereafter interposed as a defense to an action on a policy of life insurance. It declares that "in all suits upon policies of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide." The subsequent clause "unless it shall be shown to the satisfaction of the court or jury trying the cause that the insured contemplated suicide at the time he made his application for the policy," was not intended to create or afford to life insurance companies a new defense to such actions, but rather to state an exception to the general rule first enunciated. The Legislature was doubtless aware of the fact that at common law, without the aid of any statute, it was competent for an insurance company to show, by way of defense to an action on a life insurance policy, that the assured had taken out the policy with the preconceived intent of thereafter committing suicide and that such purpose was subsequently executed. It doubtless intended by the concluding clause to preserve the right to still make that defense. *Smith* v. *The National Benefit Society*, 123 N. Y., 85. This seems to us to have been the manifest purpose of the concluding paragraph of the statute. It recognizes the existence of a defense well known to the law, to-wit: the defense of fraud, and authorizes the insurer to make that defense. It must be borne in mind that the general purpose of the statute was to curtail the rights of insurance companies rather than to enlarge them, wherefore it cannot well be presumed that the Legislature intended to create in their favor a new statutory defense consisting in the fact that the assured prior to his application for insurance had considered the expediency of committing suicide in a given emergency, although he had formed no fixed resolution to do so. We think, therefore, that the contention that the Legislature used the word "contemplated" to signify a state of mind in which the assured had considered or thought about the subject of suicide without having any well defined purpose or intent, is not tenable.

Another objection to the construction sought to be placed upon the statute by the defendant company is, that it renders the law too uncertain and difficult of application. If we adopt the defendant's definition of the word "contemplated" and assume that it was used by the Legislature in that sense, then the inquiry immediately arises,

when can a person be said to have so far considered the subject of suicide, or to have so had that thought in mind, as to vitiate a policy of life insurance? In the practical administration of the law, courts will find it difficult to answer this question to the comprehension of a jury. The line must necessarily be drawn somewhere between that amount of thought or contemplation which will and that which will not defeat a policy, because a subject may be considered with different degrees of intensity or attention and it will hardly do to say that any amount of thought on the subject of suicide as a future possibility, at the time of taking out a policy, will serve to avoid it if the assured eventually dies by his own hand.

Upon the whole, therefore, we conclude that the statute should be construed to mean that hereafter it shall be no defense to a suit upon a life insurance policy that the insured committed suicide, unless it should be preven to the satisfaction of the court or jury that the insured *intended* or *had resolved* to commit suicide at the time when he made his application for the policy. This, as we understand the charge, was the view that was entertained by the trial court and substantially expressed in its instruction; and in thus declaring the law, no error was committed. The judgment of the circuit court is therefore

Affirmed.

Filed September 16, 1895.

And on the 16th day of September, A. D. 1895, in the record of the proceedings of said Circuit Court of Appeals is the judgment in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals,

Eighth Circuit. May Term, 1895.

Monday, September 16, 1895.

The Aetna Life Insurance Company,
Plaintiff in Error,

No. 624. vs.

Nancy L. Florida,
Defendant in Error.

In Error to the Circuit Court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause, be, and the same is hereby affirmed with costs; and that Nancy L. Florida have and recover against the Aetna Life Insurance Company, the sum of twenty dollars for her cost herein and have execution therefor.

September 16, 1895.

And on the 2d day of October, A. D. 1895, there was filed in the clerk's office of said Circuit Court of Appeals a petition for a rehearing in said cause, in the words and figures following to-wit:

United States Circuit Court of Appeals.

EIGHTH CIRCUIT.

MAY TERM, A. D. 1895.

ÆTNA LIFE INSURANCE COMPANY, *Plaintiff in Error.* vs. NANCY L. FLORIDA, *Defendant in Error.*	No. 624.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

PETITION FOR RE-HEARING.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Comes now the plaintiff in error, the Aetna Life Insurance Company, and respectfully petitions this honorable court in the above entitled cause, to set aside the judgment heretofore rendered by this court therein, and to grant to the said plaintiff in error in said cause a rehearing thereof, for the following reasons:

I.

The court erred in its construction of Section 5855 of the Revised Statutes of 1889, of the State of Missouri.

II.

The court erred in construing the word "contemplated," as used in said statute, to mean "intended or had resolved."

III.

The said statute is void, being against public policy.

IV.

The said statute is void, being an illegal restriction upon the private right of contract, which right is inherent under all forms of government in the United States.

V.

The said statute, under the construction given thereto by this court, is void, being against public policy.

VI.

The said statute, under the construction given thereto by this court, is void, being an illegal restriction upon the private right of contract possessed by the plaintiff in error in common with all other citizens of the United States, and of the several States thereof.

VII.

The court erred in believing and understanding plaintiff in error as urging, that under the construction given to said statute by plaintiff in error said statute did or would afford any new or different defense in suits upon life insurance contracts than was afforded at common law.

VIII.

The court erred in its conclusions respecting the assignment of error as to the exclusion of evidence on the trial court.

Wherefore, plaintiff in error, the Aetna Life Insurance Company prays as aforesaid.

FRANK M. ESTES,
Counsel for Plaintiff in Error.

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

I, Frank M. Estes, counsel for plaintiff in error, in the above entitled cause, do hereby certify that the above and foregoing petition for a re-hearing thereof is made in absolute good faith and in the honest belief that said petition should be granted; and I further certify that to the best of my opinion the grounds for said application, as therein stated, are sufficient in law, and that said petition is not made for the purpose of vexation or delay.

FRANK M. ESTES,
Counsel for Plaintiff in Error.

And on the 7th day of October, A. D. 1895, in the record of the proceedings of said Circuit Court of Appeals is an order denying the petition for rehearing in the words and figures following, to-wit:

United States Circuit Court of Appeals.

Eighth Circuit. May Term, 1895.

Monday, October 7, 1895.

The Aetna Life Insurance Company,
Plaintiff in Error,

No. 624. vs.
Nancy L. Florida,
Defendant in Error.

In Error to the Circuit Court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the petition filed by counsel for Plaintiff in Error for a rehearing and the brief filed in support thereof heretofore submitted to the court.

On consideration whereof, it is now here ordered by his court that the said petition for a rehearing be, and the same is hereby denied.

United States Circuit Court of Appeals,

Eighth Circuit.

I, John D. Jordan, clerk of the United States Circuit Court of Appeals, Eighth Circuit, do hereby certify that the foregoing 152 pages contain a true transcript of the record as printed by stipulation of the parties, upon which the cause was heard in this court, and true and complete copies of the proceedings and record entries, including the opinion of said Circuit Court of Appeals in the case of The Aetna Life Insurance Cnmpany, plaintiff in error, vs. Nancy L. Florida, defendant in error, No. 624, May Term, 1895, as the same remain upon the files and records of said United States Circuit Court of Appeals.

Seal of the United States Circuit Court of Appeals Eighth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals at the City of St. Louis Missouri, this twenty-second day of October, A. D. 1895.

JOHN D. JORDAN,

Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Office Supreme Court U. S.
NOV 11 1895
JAMES H. McKENNEY,
CLERK

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IN THE

Supreme Court of the United States of America.

OCTOBER TERM, 1895.

THE ÆTNA LIFE INSURANCE COMPANY,
Plaintiff in Error.
vs.
NANCY L. FLORIDA,
Defendant in Error.

PETITION FOR WRIT OF CERTIORARI.

FRANK M. ESTES,
Counsel for Petitioner.

W. J. KESL, 317 OLIVE ST.

IN THE

Supreme Court of the United States of America.

OCTOBER TERM, 1895.

THE ÆTNA LIFE INSURANCE COMPANY,
Plaintiff in Error.
vs.
NANCY L. FLORIDA,
Defendant in Error.

Petition for writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit, requiring said court tocertify to the Supreme Court of the United States, for its review and determination, the case of "The Ætna Life Insurance Company, Plaintiff in Error, vs. Nancy L. Florida, Defendant in Error."

To the Honorable the Supreme Court of the United States:

The petition of the Ætna Life Insurance Company respectfully shows to this honorable court as follows:

I.

Your petitioner is a corporation duly organized under the laws of and is a citizen of the State of Connecticut; and was at the time hereinafter stated and still is, by virtue of its corporate powers granted by said State of Connecticut and under authority of the laws of the State of Missouri, engaged in business in said State of Missouri, as a life insurance company.

II.

That in the course of its said business in said State of Missouri, petitioner, upon the application of and considerations paid and to be paid to it by one, Alonzo K. Florida and his acceptance thereof, agreeing to the terms and conditions therein contained, petitioner issued to him its policies of insurance upon his life, respectively as follows: One dated July 30, 1891, for the sum of $5000.00 and term of ten years, and one dated July 12, 1892, for the sum of $10,000.00 and term of twenty years. That by each of said policies petitioner bound itself, upon consideration therein named, to pay to Nancy L. Florida, wife of said Alonzo K. Florida, upon his death within the terms therof the sums therein stipulated, as above; it being, however, in each of said policies provided and agreed that if the insured, said Alonzo K. Florida, should commit suicide, then said policy should become null and void.

III.

That thereafter, while both said policies were still in force, on April 27, 1893, said Alonzo K. Florida committed suicide.

IV.

That when said policies were so issued, and ever since, it was and has been provided by Section 5855 of the Revised Statutes of 1889 of the State of Missouri as follows: "In all suits upon policies of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the

policy, and any stipulation in the policy to the contrary shall be void."

V.

That on March, 2, 1894, in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, said Nancy L. Florida, then and since a resident of said district and a citizen of said State of Missouri, instituted against petitioner her action to recover against petitioner upon the aforesaid policies.

VI.

That in said action the plaintiff filed her petition as follows: Now comes Nancy L. Florida, plaintiff in the above entitled cause, and states that she is a resident of the City of St. Louis, and a citizen of the State of Missouri, and that defendant, the Aetna Life Insurance Company, is a corporation duly organized under the laws of the State of Connecticut, and is a citizen of said State of Connecticut; that said defendant is now, and was at the times hereinafter stated, doing business as a life insurance company in the State of Missouri under and in accordance with the provisions and regulations of the Statutes of the State of Missouri relating to foreign life insurance companies.

And for her first cause of action herein, plaintiff states that on the 30th day of July, A. D., 1891, and up to the 27th day of April, 1893, she was the wife of one, Alonzo K. Florida, and during this time resided with him in the State of Missouri; that on the said 30th day of July, A. D., 1891, the said defendant, by its certain contract, commonly called a policy of insurance, of that date, duly executed and delivered by it within said State to the said plaintiff, which is herewith filed and marked "Exhibit

A," for the consideration of eighty-six dollars and eighty cents ($86.80) then paid to it, and the undertaking to pay said sum of eighty-six dollars and eighty cents ($86.80) on the 30th day of July of each and every year during the continuance of said policy, did insure the life of the said Alonzo K. Florida for the period of ten years thereafter, and did thereby promise, within ninety days after satisfactory proof of the death of said Alonzo K. Florida within said period, to pay to this plaintiff, the wife of the said Alonzo K. Florida, the sum of five thousand ($5000) dollars in money; and while said policy was in full force, to-wit, on the 27th day of April, 1893, the said Alonzo K. Florida departed this life; that afterwards, to-wit, on the 18th day of July, 1893, satisfactory proof of the death of the said Alonzo K. Florida was given to the said defendant by this plaintiff; that during the life of the said Alonzo K. Florida, he, the said Alonzo K. Florida, and the said plaintiff duly paid said sums of money to the defendant annually as in said policy of insurance undertaken, as aforesaid, and otherwise complied with and performed each and all of the conditions and provisions of said policy of insurance required of them or either of them to be complied with or performed; that the said plaintiff heretofore and on the 19th day of October, 1893, demanded of the said defendant the payment of the said sum of five thousand ($5000) dollars, which the said defendant has hitherto failed to pay and now refuses to pay; wherefore plaintiff prays judgment against said defendant for said sum of five thousand ($5000) dollars with interest thereon from the 19th day of October, A. D., 1893, at the rate of six per cent. per annum.

For her further and second cause of action herein, plaintiff states that on the 12th day of July, 1892, and up to the 27th day of April, 1893, she was the wife of one, Alonzo K. Florida, and during this time resided with him in the State of Missouri; that on the said 12th day of July,

A. D., 1892, the said defendant, by its certain contract, commonly called a policy of insurance, of that date, duly executed and delivered by it within said State to the said plaintiff, which is herewith filed and marked "Exhibit B," for the consideration of three hundred and fifty dollars and sixty cents ($350.60) then paid to it, and the undertaking to pay said sum of three hundred and fifty dollars and sixty cents ($350.60) on the 12th day of July each and every year during the continuance of said policy, did insure the life of the said Alonzo K. Florida for the period of twenty years thereafter, and did thereby promise, within ninety days after satisfactory proof of the death of the said Alonzo K. Florida within said period, to pay to this plaintiff, the wife of the said Alonzo K. Florida, the sum of ten thousand dollars ($10,000) in money; and while said policy was in full force, to-wit, on the 27th day of April, 1893, the said Alonzo K. Florida departed this life; that afterwards, to-wit, (8) on the 18th day of July, 1893, satisfactory proof of the death of the said Alonzo K. Florida was given to the said defendant by this plaintiff; that during the life-time of the said Alonzo K. Florida, he, the said Alonzo K. Florida, and the said plaintiff, duly paid said sums of money to the defendant annually, as in said policy of insurance undertaken, as aforesaid, and otherwise complied with and performed each and all of the conditions and provisions of said policy of insurance required of them or either of them to be complied with or performed; that the said plaintiff heretofore and on the 19th day of October, 1893, demanded of the said defendant the payment of the said sum of ten thousand dollars ($10,000) which the said defendant has hitherto failed to pay, and still refuses to pay; wherefore plaintiff prays judgment against said defendant for said sum of ten thousand dollars ($10,000), with interest thereon from the 19th day of October, A. D. 1893, at the rate of six per cent. per annum.

VII.

That petitioner appeared to said action, and on March 28th, 1894, filed therein its answer, as follows:

Comes now the defendant Aetna Life Insurance Company, and for answer to the two counts contained in plaintiff's petition herein, admits that it is a corporation duly organized under the laws of the State of Connecticut, and was at the time hereinafter stated doing business as a life insurance company in the State of Missouri, under and in accordance with the provisions and regulations of the statutes of the State of Missouri relating to foreign life insurance companies.

The defendant admits, as stated in plaintiff's petition, that it issued to Alonzo K. Florida, on the 30th day of July, 1891, and on the 12th day of July, 1892, its two certain life insurance policies for the sums of $5,000 and $10,000, respectively; and that said Florida paid the premiums due upon said policies during his life-time, and that said Florida departed this life on the 27th day of April, 1893, and that proof of the death of said Florida was furnished to this defendant by this plaintiff.

Defendant, further answering, states that the plaintiff should not recover upon either of the policies issued to said Florida on the dates as aforesaid, for the reason that in and by the terms of each of said policies it is provided, "This policy is issued and accepted subject to the following provisions:

SEC. 4. The answers, representations and declarations contained in and endorsed upon the application for this insurance are warranted to be true; and if this policy has been obtained by fraud, misrepresentation or concealment; or if the insured shall commit suicide, then this policy shall become null and void.

Defendant states that said polices were issued by the defendant in consideration of certain representations and warranties contained in his written applications to the defendant for the said policies dated on the 25th day of July, 1891, and on the 24th day of June, 1892.

That said Florida in making his first application to this company, in answer to a question as to what amounts are now insured upon his life, omitted to mention certain policies which had therefore been issued to him by different insurance companies. And in his second application, dated June 24th, 1892, he made the same misstatements with reference to the amount of insurance he had in various companies.

And in answer to the question "have you had, during the past seven years, any disease or severe sickness," said Florida answered "no," when in fact he had suffered from a severe attack of *la grippe* in the winter of 1891-2. And that said Florida in answer to questions as to his family history, misstated the facts in relation to the cause of the deaths of both of his parents. That the policy which was issued on the 30th day of July, 1891, was, by oversight of said Florida, allowed to lapse. And that on the 30th day of September, 1892, he made an application for the revival of said policy, and in answer to questions as to his general condition of health he made false and fraudulent statements with referenee thereto, and for the purpose of defrauding said company of the amount of said insurance.

That on the 27th day of April, 1893, and within two years from the date of said policies, said Florida committed suicide; and the defendant alleges the fact to be that said Florida, at the time that he made his said applications to the defendant for said policies, contemplated suicide.

That at the time of making said application for said insurance, said Florida contemplated and intended to

secure the said contracts of insurance form this defendant with the intention soon thereafter to take his own life.

That the said purpose and intention of said Florida was not known to the defendant, and was purposely concealed by him in order that he might secure said policies of insurance and thereafter, by taking his own life, enable his representatives to secure the benefits accruing under said policies.

That the said acts of Florida were a fraud upon this defendant; and that by reason of said acts of said Florida said policies of insurance became wholly void. And the defendant having fully answered, asks to go hence with its costs.

VIII.

That on March 30, 1894, in said action, the plaintiff filed her reply to said answer of petitioner as follows:

And now comes the said plaintiff, and for her reply to the new matter set up in defendant's answer denies each and every allegation thereof.

IX.

That on October 1, 2, and 3, 1894, said cause in said court came on for trial before the Honorable H. D. Priest, judge of the United States Court for the Eastern Judicial District of Missouri, and holding said Circuit Court, and a jury and the respective parties presented and gave in evidence tending to support the contentions made by them under the aforesaid issues.

X.

That on October 3rd, 1894, upon such trial of said cause, and before submission thereof to the jury,

petitioner requested the court to charge the jury as follows:

The jury are instructed that the main question in this case for their consideration is that of—fraud. That the defendant is not bound to prove fraud directly but that it may be inferred from the surroundings, circumstances and actions of a party.

The theory of the defense is that the purpose of Florida in obtaining the insurance was to cheat and defraud the company. In support of that position evidence that he obtained insurance upon his life in other companies for a like fraudulent purpose can be taken into consideration by the jury. A repetition of the acts of the same character naturally indicates the same purpose in all of them, and if, when considered, they cannot be reasonably explained without ascribing a particular motive to the perpetrator, such motive will be considered as prompting each act.

In the case at bar, if the jury finds that Florida intentionally misstated in his application to the defendant company with reference to the causes of the deaths of his father and mother and their ages—that he intentionally misrepresented the facts as to his health, all these things you may take into consideration in determining his intention of defrauding the defendant when he took out his policies. And if you further find from the evidence that he was engaged in a number of fraudulent deals in real estate and was fearful of criminal prosecutions in consequence thereof, and said that he would rather kill himself than be imprisoned, and if you further find that he commenced and acted systematically in taking out insurance upon his life, and that he did take out a large amount of insurance within a short period of time, and if you believe from all the evidence that it was his preconceived purpose to defraud the insurance company, then you have a right to infer that at the time of taking out the two

policies in this suit that he intended to commit suicide at the times he made application for insurance.

That the court thereupon refused to so charge the jury in said action and petitioner duly excepted.

XI.

That thereupon the court, of its own motion charged the said jury, upon the submission of said cause as follows:

Gentlemen of the Jury:

The plaintiff in this case seeks to recover upon two separate policies of life insurance issued upon the life of her husband, Alonzo K. Florida, at his instance, and for her benefit, by the defendant company.

One of these policies is dated July 30th, 1891, and is for the sum of $5,000. The other is dated July 12th, 1892, and is for the sum of $10,000. These being separate contracts of insurance and each standing independent of the other, plaintiff was required to set forth her claim under them separately in her petition, and these separate statements are called "counts."

The first count relates to the policy dated July 30th, 1891, for $5,000, and the second count relates to the policy dated July 12th, 1892, for $10,000.

The issue of fact which you are to determine and which I will presently define for you, is the same with respect to each count of the petition, and while the issue is the same, your finding upon that issue with respect to each count need not necessarily be the same.

You may for instance find for the plaintiff upon the first count and for the defendant upon the second count, or you may find for the plaintiff on both counts or for the defendants on both counts.

You must, however, return a separate verdict with respect to each count, that is, a separate finding upon each of the two counts.

The defendant insurance company concedes these policies of insurance to be valid, and concedes plaintiff 's right to recover upon them, unless at the time Alonzo K. Florida made application for them, he was in contemplation of committing suicide at some future time, so that by such acts of self-destruction, the insurance company would be defrauded of the sum so insured, for the benefit of the person named in said policy.

Now, in view of the wide scope which the testimony has taken, in view of its nature, being largely circumstantial, I feel called upon to impress upon your attention the single issue which you are to determine, that is, whether there was a matured well formed purpose at the time these applications were made to commit suicide in order that the beneficiaries might realize the sums mentioned in the policies. The burden of sustaining the issue as stated of such contemplated purpose on the part of Alonzo K. Florida, at the respective times he applied for and procured these policies of insurance, devolves upon the defendant.

The fact of suicide is no defense unless it be the culmination of a purpose formed at the time application was made for the respective policies.

Unless, therefore, you believe from the weight of the evidence that on the 30th day of July, 1891, at the time of making application for the policy at that date, Alonzo K. Florida contemplated thereafter committing suicide and thereby enabling his wife to collect the amount named in in the policy, your verdict upon the first count must be for the plaintiff.

If, upon the other hand, you believe that such purpose existed at the time of making such application, then your verdict must be for the defendant.

Unless you believe from the weight of the evidence that on the 12th day of July, 1892, at the time of making application for the policy of insurance of that date, Alonzo

K. Florida, did so, with the contemplated well formed purpose of thereafter committing suicide and thereby enabling his wife to collect the amount named in the policy, your verdict must be for the plaintiff upon the second count of the petition.

If upon the other hand you believe that such purpose existed at the time such application was made, then your verdict must be for the defendant.

The fact, if from the evidence you believe it to be a fact that Alonzo K. Florida committed suicide, constitutes in itself no defense on the part of the insurance company under this clause.

In order to make a defense out of such fact you must believe from the preponderance of the evidence, that Alonzo K. Florida, at the time he made application for either or both of the policies of life insurance involved in the suit, contemplated suicide and by contemplated is meant there was a complete well formed purpose of taking his own life and that purpose culminated by actually killing himself with a view, and for the purpose of defrauding the defendant company out of the money stipulated in the policy to be paid.

While the alleged purpose of Florida at the time of making application for policies in this suit to commit suicide may be proven from circumstances or may be inferred from facts and circumstances in evidence, such assumptions or conjectures must have a reasonable foundation in fact, and must be a reasonable and intelligent inference from the fact proven.

You are instructed that a suicidal purpose is not to be presumed, and the burden of proving it rests upon the party alleging it, which, therefore, would be the defendant in this case, and while it need not be shown by direct and positive evidence, but may be proven by facts and circumstances indicative thereof, still mere matters of suspicion are not sufficient to satisfy the mind of its existence

and should never be imputed when the facts and circumstances on which it is predicated are mere matters of suspicion.

You are instructed, under the pleadings and evidence in this case, that if you believe that Alonzo K. Florida, at the time of making application for the $5,000 policy of insurance misstated either the facts with reference to his father's or mother's age or the amount of insurance then existing upon his life or the facts in relation to the cause of the death of his father or mother, that neither one of such statements constitutes any defense to this action, as set forth in the first count of the petition, and if you believe that in making the second application for the policy of insurance of $10,000 he misrepresented either one of the facts hereinbefore mentioned with reference to the $5,000 policy, that such misstatement in itself constitutes no defense against the action of the plaintiff under the second count of the petition for $10,000.

If you find for the plaintiff on the first count of the petition, you should find a verdict in the sum of $5,000, together with interest on that sum from and after the 19th day of October, 1893, to this date, at the rate of six per cent. per annum.

If you find for the plaintiff on the second count of the petition, you should find a verdict in the sum of $10,000, together with interest on that sum from and after the 19th day of October, 1893, until this date at the rate of six per cent. per annum.

The defendant, before the jury had retired from the box, objected and excepted to that part of the court's charge to the jury in this case, which is as follows:

First. "Now, in view of the wide scope which the testimony has taken, in view of its nature, being largely circumstantial, I feel called upon to impress upon your attention the single issue which you are to determine, that is, whether there was a matured, well-formed purpose at the

time these applications were made to commit suicide in order that the beneficiaries might realize the sums mentioned in the policies. The burden of sustaining the issue of such contemplated purpose on the part of Alonzo K. Florida at the respective times he applied for and procured these policies of insurance, devolves upon the defendant."

Defendant also, at the same time and in same manner, objected to and excepted to that part of the court's charge to the jury in this case, which is as follows:

Second. "The fact of suicide is no defense unless it be the culmination of a purpose formed at the time application was made for the respective policies. Unless, therefore, you believe from the weight of the evidence that on the 30th day of July, 1891, at the time of making application for the policy of that date, Alonzo K. Florida contemplated thereafter committing suicide and thereby enabling his wife to collect the amount named in the policy, then your verdict upon the first count must be for the plaintiff. If, upon the other hand, you believe that such purpose existed at the time of making such application, then your verdict must be for the defendant."

Defendant, before the jury had retired from the box, excepted to that part of the court's charge to the jury, which is as follows:

Third. "Unless you believe from the weight of the evidence that on the 12th day of July, 1892, at the time of making application for the policy of insurance of that date, Alonzo K. Florida did so, with the contemplated, well formed purpose of thereafter committing suicide, and thereby enabling his wife to collect the amount named in the policy, your verdict must be for plaintiff upon the second count of the petition. If, upon the other hand, you believe that such purpose existed at the time such application was made, then your verdict must be for the defendant."

Defendant, in the presence of the jury, and before the jury had retired, objected and excepted to that part of the court's charge to the jury, which is as follows:

Fourth. "The fact, if from the evidence you believe it to be a fact, that Alonzo K. Florida committed suicide constitutes in itself no defense on the part of the insurance company under this clause.

In order to make a defense of such a fact, you must believe from the preponderance of evidence that Alonzo K. Florida, at the time he made application for either or both policies of life insurance involved in this suit, contemplated suicide, and by contemplated is meant that there was a complete, well formed purpose of taking his own life, and that purpose culminated by actually killing himself with a view and for the purpose of defrauding the defendant company out of money stipulated in the policies to be paid."

And the defendant, before the jury had retired from the box, and in the presence of the jury, excepted to that part of the court's charge to the jury in this case, which is as follows:

Fifth. "You are instructed that a suicidal purpose is not to be presumed, and the burden of proving it rests upon the party alleging it, which, therefore, would be the defendant in this case, and while it need not be shown by direct and positive evidence, but may be proven by facts and circumstances indicative thereof, still mere matters of suspicion are not sufficient to satisfy the mind of its existence, and should never be imputed when the facts and circumstances on which it is predicated are mere matters of suspicion."

The above constitute all of the instructions given by the court in this cause.

XII.

Petitioner upon such charge being so given, and before said jury had retired to consider said cause, objected to the several portions of such charges as follows:

First. "Now, in view of the wide scope which the testimony has taken, in view of its nature, being largely circumstantial, I feel called upon to impress upon your attention the single issue which you are to determine, that is, whether there was a matured, well-formed purpose at the time these applications were made to commit suicide in order that the beneficiaries might realize the sums mentioned in the policies. The burden of sustaining the issue of such contemplated purpose on the part of Alonzo K. Florida at the respective times he applied for and procured these policies of insurance, devolves upon the defendant."———

Second. "The fact of suicide is no defense unless it be the culmination of a purpose formed at the time application was made for the respective policies. Unless, therefore, you believe from the weight of the evidence that on the 30th day of July, 1891, at the time of making application for the policy of that date, Alonzo K. Florida contemplated thereafter committing suicide and thereby enabling his wife to collect the amount named in the policy, then your verdict upon the first count must be for the plaintiff. If, upon the other hand, you believe that such purpose existed at the time of making such application, then your verdict must be for the defendant."

Third. "Unless you believe from the weight of the evidence that on the 12th day of July, 1892, at the time of making application for the policy of insurance of that date, Alonzo K. Florida did so with the contemplated, well-formed purpose of thereafter committing suicide, and thereby enabling his wife to collect the amount named in

the policy, your verdict must be for plaintiff upon the second count of the petition. If, upon the other hand, you believe that such purpose existed at the time such application was made, then your verdict must be for the defendant."

Fourth. "The fact, if from the evidence you believe it to be a fact, that Alonzo K. Florida committed suicide constitutes in itself no defense on the part of the insurance company under this clause.

170. In order to make a defense out of such a fact, you must believe from the preponderance of evidence that Alonzo K. Florida, at the time he made application for either or both policies of life insurance involved in this suit, contemplated suicide, and by contemplated is meant that there was a complete, well-formed purpose of taking his own life, and that purpose culminated by actually killing himself with a view and for the purpose of defrauding the defendant company out of the money stipulated in the policies to be paid.

Fifth. "You are instructed that a suicidal purpose is not to be presumed, and the burden of proving it rests upon the party alleging it, which, therefore, would be the defendant in this case, and, while it need not be shown by direct and positive evidence, but may be proven by facts and circumstances indicative thereof, still mere matters of suspicion are not sufficient to satisfy the mind of its existence, and should never be imputed when the facts and circumstances on which it is predicated are mere matters of suspicion."

XIII.

That on October 3, 1895, in said action, upon submission thereof, the said jury rendered their verdict in favor of the plaintiff upon each of the counts of said petition and the following judgment was entered:

Now again come the parties hereto by their attorneys, the plaintiff by Boyle and Adams and L. R. Wilfley and the defendant by F. M. Estes, and also comes the jury herein as on yesterday, to-wit: Alexander Wright, Alex. Kessler, H. M. Jones, James Hensil, W. H. Freeman, Henry Hill, Elam A. Sloan, Hugh Long, Francis A. Lane, James Owens, Geo. Thomure and J. H. Plackmeyer, who, after hearing further argument of counsel and the charge of the court, return the following verdict, to-wit: "We, the jury, find for plaintiff on the first count of her petition and assess her damages at the sum of five thousand two hundred and eighty-eight dollars and twenty-eight cents. And we find for plaintiff on the second count of her petition and assess her damages at the sum of ten thousand five hundred and seventy-six dollars and fifty-six cents.

(Signed) FRANCIS A. LANE,

Foreman."

It is therefore considered by the court that the plaintiff Nancy L Florida have and recover of the defendant, Aetna Life Insurance Company, the sum of fifteen thousand eight hundred and sixty-four dollars and eighty-four cents, being the total damages aforesaid by the jury assessed as also the costs in this behalf expended and have therefore execution."

XIV.

Your petitioner thereafter duly filed in said action its motion for a new trial, and, upon the overruling thereof by said court, its bill of exceptions, preserving for review the evidence and proceedings upon the trial of said cause.

XV.

That on February 14, 1895, petitioner, in said United States Circuit Court, duly sued out a writ of error in said cause in virtue of which writ the record and proceedings in said cause were certified for review to the United States Circuit Court of Appeals for the Eighth Circuit, and said cause was therein entered and docketed, numbered 624, and entitled "The Aetna Life Insurance Company, plaintiff in Error, vs. Nancy L. Florida, Defendant in Error."

XVI.

The assignment of errors filed on behalf of petitioner in said cause contained among other specifications the following:

The court erred in giving the following instructions on its own motion:

First. "Now, in view of the wide scope which the testimony has taken, in view of its nature, being largely circumstantial, I feel called upon to impress upon your attention the single issue which you are to determine, that is, whether there was a matured, well-formed purpose at the time these applications were made to commit suicide in order that the beneficiaries might realize the sums mentioned in the policies. The burden of sustaining the issue of such contemplated purpose on the part of Alonzo K. Florida at the respective times he applied for and procured these policies of insurance, devolves upon the defendant."

The court also erred in giving the following instruction on its own motion:

Now again come the parties hereto by their attorneys, the plaintiff by Boyle and Adams and L. R. Wilfley and the defendant by F. M. Estes, and also comes the jury herein as on yesterday, to-wit: Alexander Wright, Alex. Kessler, H. M. Jones, James Hensil, W. H. Freeman, Henry Hill, Elam A. Sloan, Hugh Long, Francis A. Lane, James Owens, Geo. Thomure and J. H. Plackmeyer, who, after hearing further argument of counsel and the charge of the court, return the following verdict, to-wit: "We, the jury, find for plaintiff on the first count of her petition and assess her damages at the sum of five thousand two hundred and eighty-eight dollars and twenty-eight cents. And we find for plaintiff on the second count of her petition and assess her damages at the sum of ten thousand five hundred and seventy-six dollars and fifty-six cents.

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The court also erred in giving the following instruction on its own motion:

Second. "The fact of suicide is no defense unless it be the culmination of a purpose formed at the time application was made for the respective policies. Unless, therefore, you believe from the weight of evidence that on the 30th day of July, 1891, at the time of making application for the policy of that date, Alonzo K. Florida contemplated thereafter committing suicide, and thereby enabling his wife to collect the amount named in the policy, then your verdict upon the first count must be for the plaintiff. If, upon the other hand, you believe that such intention existed at the time of making such application, then your verdict must be for the defendant."

The court erred in giving the following instructions on its own motion:

Third. "Unless you believe from the weight of the evidence that on the 12th day of July, 1892, at the time of making application for the policy of insurance of that date, Alonzo K. Florida did so, with the contemplated, well-formed purpose of thereafter committing suicide, and thereby enabling his wife to collect the amount named in the policy, your verdict must be for the plaintiff upon the second count of the petition. If, upon the other hand, you believe that such purpose existed at the time such application was made, then your verdict must be for the defendant."

The court also erred in giving the following instruction on its own motion:

Fourth. "The fact, if from the evidence you believe it to be a fact, that Alonzo K. Florida committed suicide constitutes in itself no defense on the part of the insurance company under this clause.

In order to make a defense out of such a fact, you must believe from the preponderance of evidence that Alonzo K. Florida, at the time he had made application for either or both policies of life insurance involved in this suit, contemplated suicide, and by contemplated, is

meant that there was a complete, well formed purpose of taking his own life, and that purpose culminated by actually killing himself, with a view and for the purpose of defrauding the defendant company out of the money stipulated in the policies to be paid."

The Court erred in giving the following instruction on its own motion:

Fifth. "You are instructed that a suicidal purpose is not to be presumed, and the burden of proving it rests upon the party alleging it, which, therefore, would be the defendant in this case, and while it need not be shown by direct and positive evidence, but may be proven by facts and circumstances indicative thereof, still mere matters of suspicion are not sufficient to satisfy the mind of its existence, and should never be imputed when the facts and circumstances on which it is predicated are mere matters of suspicion."

The Court erred in refusing to instruct the jury, at the request of the defendant, as follows:

"The Court instructs the jury that the main question in this case is one of fraud. That the defendant is not bound to prove fraud directly, but that it may be inferred from the surroundings, circumstances and actions of a party.

The theory of the defense is that the purpose of Florida in obtaining the insurance was to cheat and defraud the company. In support of that position evidence that he obtained insurance upon his life in other companies for a like fraudulent purpose can be taken into consideration by the jury. A repetition of the acts of the same character naturally indicates the same purpose in all of them, and if, when considered, they cannot be (reasonably) explained without ascribing a particular motive to the perpetrator, such motive will be considered as prompting each act. In the case at bar, if the jury find that Florida intentionally misstated in his applications to the

defendant company with reference to the causes of the deaths of his father and mother and their ages, that he intentionally misrepresented the amount of insurance he had in other companies, and intentionally misrepresented the facts as to his health, all these things you may take into consideration in determining his intention of defrauding the defendant when he took out his policies. And if you further find from the evidence that he was engaged in a number of fraudulent deals in real estate and was fearful of criminal prosecution in consequence thereof, and said that he would rather kill himself than be imprisoned, and if you further find that he commenced and acted systematically in taking out insurance upon his life, and that he did take out a large amount of insurance within a short period of time, and if you believe from all the evidence that his preconceived purpose was to defraud the insurance company, then you have a right to infer that at the time of taking out the two policies in this suit that he intended to commit suicide at the times he made application for insurance."

XVII.

Said cause came on to be heard in said Circuit Court of Appeals, at the City of St. Paul, State of Minnesota, before the Honorable Henry C. Caldwell, Walter H. Sanborn and Amos M. Thayer, United States Circuit Judges for the Eighth Circuit, and on the 16th day of September, 1895, the opinion of said court was therein filed, as follows:

Thayer, J., delivered the opinion of the court.

"This action was brought by Nancy L. Florida, the defendant in error, against the Ætna Life Insurance Company, the plaintiff in error, to recover the amount of two life insurance policies issued by said company on the life of Alonzo K. Florida, the plaintiff's husband. Both of

said policies were made payable to plaintiff as beneficiary. One of them was executed on July 30, 1891, for the sum of $5,000.00, the other was executed on July 12, 1892, for the sum of $10,000.00. The plaintiff's husband committed suicide on April 27, 1893, and a demand was thereafter made on the defendant company for payment of the policies. Payment was refused and the present suit was thereupon instituted.

On the trial of the case the Circuit Court instructed the jury, in substance, that it was conceded by the defendant company that the plaintiff was entitled to recover on the policies, "unless at the time Alonzo K. Florida made application for them he was in contemplation of committing suicide at some future time, so that by such act of self-destruction the insurance company would be defrauded of the sum so insured," and as no exception was taken to this instruction, we must assume, for the purpose of this decision, that the only defense intended to be relied upon by the defendant company was the defense pleaded in its answer as follows:

"Defendant states * * * * That on the 27th day of April, 1893, and within two years from the date of said policy, said Florida committed suicide; and the defendant alleges the fact to be that said Florida at the time that he made his said applications to the defendant for said policies, contemplated suicide. That at the time of making said applications for said insurance, said Florida contemplated and intended to secure the said contracts of insurance from this defendant with the intention soon thereafter to take his own life. That the said purpose and intention of said Florida was not known to the defendant, and was purposely concealed by him in order that he might secure said policies of insurance and thereafter, by taking his own life, enable his representatives to secure the benefits accruing under said policies. That the said acts of said Florida were a fraud upon this defendant, and that by reason of said acts of said Florida, said policies of insurance became wholly void."

It should be stated in this connection that the policies in question were executed and delivered in the State of Missouri, and that at the date of their execution the following statutes were in force in that State:

"No misrepresentation made in obtaining or securing a policy of insurance on the life or lives of any person or persons shall be deemed material, or render the policy void, unless the matter misrepresented shall have actually contributed to the contingency or event on which the policy is to become due and payable, and whether it so contributed in any case shall be a question for a jury." Rev. Stat. of Mo. 1889, sec. 5849.

"In all suits upon polices of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void." Rev. Stat. of Mo., 1889, Sec. 5855.

In the Circuit Court of the United States for the Eastern District of Missouri, where the case was tried, the plaintiff recovered a judgment for the full amount of the policies, and the case was brought to this court to review on a writ of error sued out by the defendant company.

The errors assigned relate to the exclusion of testimony and to the charge of the trial court. There are numerous assignments of the former kind, but it would subserve no useful purpose to review them in detail, as most of the questions propounded, which were excluded, were obviously improper questions because they were calculated to elicit hearsay or secondary evidence, or the conclusions of witnesses rather than the facts on which such conclusions were based, or because the questions were designed to establish the existence of particular facts by common rumor, or because the questions asked were too vague and general, or a mere repetition that had already been asked and answered.

We shall forego any discussion of the several assignments of error to which the last remark applies, confining ourselves to those exceptions taken which seem to us to be the most tenable.

At one stage of the trial, counsel for the defendant company offered in evidence what purported to be the will of Alonzo K. Florida, deceased, for the purpose, as stated by him at the time, of showing the condition of tes-

tator's mind. It was objected to and excluded, and an exception was saved. We cannot decide whether this ruling of the trial court was right or wrong, because the alleged will is not found in the bill of exceptions, and without examining it it is impossible to say what it may have tended to show with respect to the testator's purpose or mental condition. The defendant also appears to have offered in evidence a large number of claims which had been filed in the Probate Court of the City of St. Louis against the estate of Alonzo K. Florida. These were objected to, the claims were excluded, and an exception was saved. The claims in question appear to have been excluded because the Circuit Court was of opinion that they had no tendency to show the financial condition of the deceased or at prior to the taking out of the policies in suit. Whether that ruling was erroneous or otherwise cannot be determined, because the claims are not contained in the record. The ruling of the trial court must be presumed to have been correct. A witness for the defendant company was also asked the following question: "What was Mr. Florida's financial condition during the winter of 1892 and 1893? I will put it this way, do you know what his financial condition was during the winter of 1892 and the beginning of 1893?" The answer to this interrogatory was excluded on the ground that it could have no tendency to show the financial condition of the deceased in July, 1891, and July, 1892, when the policies were taken out, and that no attempt had been made to furnish authentic evidence of his financial condition at the latter dates. We cannot say that there was any material error in this ruling, although the testimony would doubtless have been competent and would probably have been admitted if counsel had undertaken to show that the indebtedness existing against the deceased in the winter of 1892 and 1893 had its origin prior to the issuance of the policies or either of them. Without pursuing this branch of the case at any greater length, it will suffice to say that none of the errors assigned on account of the exclusion of testimony appear to us to be tenable.

The question in the case of paramount importance is, whether the Circuit Court properly defined the words "contemplated suicide," as used in the Revised Statutes

of Missouri, Sec. 5855, *supra*. On this subject the court charged the jury as follows:

"The fact of suicide is no defense unles it be the culmination of a purpose formed at the time application was made for the respective policies. Unless, therefore you believe from the weight of the evidence that on the 30th day of July, 1891, at the time of making application for the policy at that date, Alonzo K. Florida contemplated thereafter committing suicide and thereby enabling his wife to collect the amount named in the policy, then your verdict upon the first count must be for the plaintiff. * * * Unless you believe from the weight of the evidence that on the 12th day of July 1892, at the time of making application for the policy of insurance of that date, Alonzo K. Florida did so, with the contemplated, well formed purpose of thereafter comitting suicide, and thereby enabling his wife to collect the amount named in the policy, your verdict must be for the plaintiff on the second count of the petition. * * * The fact, if from the evidence you believe it to be a fact, that Alonzo K. Florida committed suicide constitutes in itself no defense on the part of the insurance companies under this clause. In order to make a defense out of such fact you must believe from the preponderance of the evidence that Alonzo K. Florida at the time he made application for either or both of the policies of life insurance involved in this suit contemplated suicide, and by contemplated is meant there was a complete well formed purpose of taking his own life and that purpose culminated by actually killing himself with a view and for the purpose of defrauding the defendant company out of the money stipulated in the policy to be paid."

The objection made to this part of the charge, and the only objection thereto, is, that the court declared that the word contemplated meant the same as the word intended. It is insisted that there is a material distinction between the words contemplated and intended; that the former word means "attentively considered"—"thought about," whereas the latter word signifies "a more determinative state of mind"—a well-formed purpose—and that the Legislature must be presumed to have used the word "contemplated" in the sense above suggested. The prop-

osition maintained by the defendant company is thus concisely stated by its counsel:

"It was not necessary for the defendant to show that Florida effected this insurance with the deliberate purpose to commit suicide; it was sufficient to show that he was 'considering with attention' the project of suicide, and effected the insurance with the design that in case his contemplation should ripen into actual perpetration of suicide, then his beneficiaries should be provided for out of the proceeds of the insurance. * * * Hence it follows that the theory expressed throughout the several portions of the charge, bearing on this point, that 'contemplated suicide' meant a pre-determined, well-formed purpose of suicide, is erroneous, and those portions of the charge expressing this conception were erroneous."

It is no doubt true that the primary signification of the word contemplate is to consider attentively or to meditate; but it is equally true that a secondary meaning of the word is "to intend," and in ordinary conversation the word "contemplate" is frequently used as a synonym for the word "intend," that is to express a well-formed purpose. Moreover, instances are not wanting where the word "contemplate" has been held to be synonymous with the word "expect" or "intend." Thus, in *Buckingham et al. vs. McLean*, 13 How, 151, 167, the words "in contemplation of bankruptcy," as used in the Bankrupt Act of 1841 (5 Stat., 442, ch. 9, Sec. 2), were held to be tantamount to the expression expecting or intending to commit an act of bankruptcy. See also *Jones vs. Howland*, 8 Metcalf (Mass.), 377.

We think, however, that the sense in which the Legislature intended to use the word "contemplated" in the statute now under consideration, can be best determined by considering the statute itself and the connection in which the word occurs. The statute was primarily designed to prevent the plea of suicide from being thereafter interposed as a defense to an action on a policy of life insurance. It declares that "in all suits upon policies of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide." The subsequent clause "unless it shall be shown to the satisfaction of the court

or jury trying the cause that the insured contemplated suicide at the time he made his application for the policy," was not intended to create or afford to life insurance companies a new defense to such actions, but rather to state an exception to the general rule first enunciated. The Legislature was doubtless aware of the fact that at common law, without the aid of any statute, it was competent for an insurance company to show, by way of defense to an action on a life insurance policy, that the assured had taken out the policy with the pre-conceived intent of thereafter committing suicide and that such purpose was subsequently executed. It doubtless intended by the concluding clause to preserve the right to still make that defense. *Smith vs. The National Benefit Society*, 123 N. Y., 85. This seems to us to have been the manifest purpose of the concluding paragraph of the statute. It recognizes the existence of a defense well known to the law, to-wit: the defense of fraud, and authorizes the insurer to make that defense. It must be borne in mind that the general purpose of the statute was to curtail the rights of insurance companies rather than to enlarge them, wherefore, it can not well be presumed that the Legislature intended to create in their favor a new statutory defense consisting in the fact that the assured prior to his application for insurance had considered the expediency of committing suicide in a given emergency, although he had formed no fixed resolution to do so. We think, therefore, that the contention that the Legislature used the word "contemplated" to signify a state of mind in which the assured had considered or thought about the subject of suicide without having any well-defined purpose or intent, is not tenable.

Another objection to the construction sought to be placed upon the statute by the defendant company is, that it renders the law too uncertain and difficult of application. If we adopt the defendant's definition of the word "contemplated" and assume that it was used by the Legislature in that sense, then the inquiry immediately arises, when can a person be said to have so far considered the subject of suicide, or to have so had that thought in mind, as to vitiate a policy of life insurance? In the practical administration of the law, courts will find it difficult to answer this question to the comprehension of a jury.

The line must necessarily be drawn somewhere between that amount of thought or contemplation which will and that which will not defeat a policy, because a subject may be considered with different degrees of intensity or attention and it will hardly do to say that any amount of thought on the subject of suicide as a future possibility, at the time of taking out a policy, will serve to avoid it if the assured eventually dies by his own hand.

Upon the whole, therefore, we conclude that the statute should be construed to mean that hereafter it shall be no defense to a suit upon a life insurance policy that the insured committed suicide, unless it shall be proven to the satisfaction of the court or jury that the insured *intended* or *had resolved* to commit suicide at the time when he made his application for the policy. This, as we understand the charge, was the view that was entertained by the trial court and substantially expressed in its instruction; and, in thus declaring the law, no error was committed. The judgment of the Circuit Court is therefore *Affirmed.*

XVIII.

Pursuant to said opinion, on September 16th, 1895, the following judgment was entered in said United States Circuit Court of Appeals:

"This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Missouri, and was argued by counsel.

"On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause be, and the same is hereby, affirmed with costs; and that Nancy L. Florida have and recover against the Ætna Life Insurance Company, the the sum of twenty dollars for her costs herein and have execution therefor."

XIX.

Thereupon your petitioner caused to be filed in said Circuit Court of Appeals, on October 2nd, 1895, its motion for re-hearing in said cause, as follows:

To the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Comes now the plaintiff in error, the Ætna Life Insurance Company, and respectfully petitions this honorable court, in the above entitled cause, to set aside the judgment heretofore rendered by this court therein, and to grant to the said plaintiff in error in said cause a re-hearing thereof, for the following reasons:

I.

The court erred in its construction of Section 5855 of the Revised Statutes of 1889, of the State of Missouri.

II.

The court erred in construing the word "contemplated" as used in said statute, to mean, "intended or had resolved."

III.

The said statute is void, being against public policy.

IV.

The said statute is void, being an illegal restriction upon the private right of contract, which right is inherent under all forms of government in the United States.

V.

The said statute, under the construction given thereto by this court, is void, being against public policy.

VI.

The said statute, under the construction given thereto by this court, is void, being an illegal restriction upon the private right of contract possessed by the plaintiff in error in common with all other citizens of the United States, and of the several States thereof.

VII.

The court erred in believing and understanding plaintiff in error as urging, that under the construction given to said statute by plaintiff in error said statute did or would afford any new or different defense in suits upon life insurance contracts than was afforded at common law.

VIII.

The Court erred in its conclusion respecting the assignment of error as to the exclusion of evidence on the trial court.

Wherefore, plaintiff in error, the Ætna Life Insurance Company, prays as aforesaid.

Said motion for rehearing was overruled on October 7th, 1895, and final disposition of said cause was made by said Circuit Court of Appeals, as follows:

"This cause came on to be heard on the petition filed by counsel for plaintiff in error for a rehearing and the

brief filed in support thereof heretofore submitted to the Court.

"On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing be, and the same is hereby denied."

A certified copy of the entire record of said cause in said Circuit Court of Appeals is herewith furnished, in conformity with the rule of this Honorable Court relative to cases from Circuit Courts of Appeals, and the same is marked Exhibit "A."

XX.

Your petitioner is advised and believes that the said judgment of said Circuit Court of Appeals affirming said judgment of said Circuit Court, is erroneous, and that this Honorable Court should require the said cause to be certified to it for review and determination under and in conformity with the provisions of the sixth section of the Act of Congress entitled "An Act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States and for other purposes," Approved March 3rd, 1891, the said case being made final in the said Circuit Court of Appeals by the said act.

XXI.

Petitioner is advised and believes that the construction given by said Circuit Court of Appeals to said Section 5855 of the Statue of the State of Missouri is erroneous and in that the words "contemplated suicide" as and in said statute, do not and ought not to be construed to mean "intended or had resolved to commit suicide," as said Court of Appeals decided in its opinion aforesaid.

XXII.

Petitioner is advised and believes that the words "contemplated suicide" as used in said statute mean and ought to be construed to mean "attentively considered or thought upon without necessarily and at all events having determided upon committing suicide" as contended by petitioner before said Circuit Court of Appeals and that upon review of the decision of said court this Honorable Court will so decide.

XXIII.

Petitioner is advised and believes that upon the review of such decision of said Circuit Court of Appeals this this court should and will reverse the said decision as to the charge to the jury of the trial judge in said cause, upon the ground that said charge was based upon an erroneous construction of the said statute of the State of Missouri.

XXIV.

Petitioner is advised and believes that, upon the construction given to said statute by said Circuit Court of Appeals the said statute is, and will by this court be held to be void and of no force and effect, as violative of the natural right of contract and right of property, and of the right to freedom of contract possessed and enjoyed by petitioner in common with all other citizens of the several States, under the forms of Federal and State government existing in the United States.

XXV.

Petitioner is advised and believes that said statute of the State of Missouri, under any proper construction

which may be placed thereon, is void, as infringing upon the natural right to possess and enjoy and dispose of property and to contract concerning the same possessed and enjoyed by petitioner in common with all other citizens of the United States and of the several States thereof.

XXVI.

Petitioner is advised and believes that said statute of the State of Missouri, as construed by said Circuit Court of Appeals, is void, because against public policy, as said statute interposes practically insuperable obstacles to the proof of suicidal frauds upon insurers of lives and affords a standing premium and inducement to suicide to holders of policies of life insurance.

XXVII.

Petitioner is advised and believes that said statute of the State of Missouri, under any proper construction that can be placed thereon is void, as contrary to public policy and a standing premium upon and inducement to suicide to holders of policies of life insurance.

XXVIII.

That the question presented upon the record in said cause and involved in the determination thereof are of great and paramount importance to petitioner and all other insurers of lives doing business throughout the United States, inasmuch as the statute herein involved strikes at the right of insurers of lives to protect themselves against voluntary self-destruction by the insured, or to protect themselves against suicidal frauds by holders of life insurance policies, and at the right of petitioner and other citi-

zens of the United States and of the several States to possess, enjoy and dispose of their individual property and to make contracts concerning the same. That legislation of a similar character has been enacted in several other States and it is of importance to the entire country that the highest tribunal in the land should determine the questions herein involved, which, so far, have never been determined by this court.

Wherefore your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding the said court to certify and send to this court, on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein entitled, "The Aetna Life Insurance Company, Plaintiff in Error, vs. Nancy L. Florida, Defendant in Error, No. 624," to the end that said case may be reviewed and determined by this court in conformity with the provisions of said act of Congress, approved March 3, 1891, and that your petitioner may have such other or further relief or remedy as to this court may seem appropriate, and that the said judgment of the said Circuit Court of Appeals in the said cause may be reversed by this honorable court.

And your petitioner will ever pray, etc.

FRANK M. ESTES.

Attorney and Counsel for Petitioner, the Aetna Life Insurance Company.

STATE OF MISSOURI, }
CITY OF ST. LOUIS, } ss.

Frank M. Estes, being duly sworn, says that he is the attorney and counsel for the Aetna Life Insurance

Company, the petitioner herein, and as such had personal charge for petitioner of the case in the foregoing petition mentioned, both in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri and in the United States Circuit Court of Appeals for the Eighth Circuit; that he has read the foregoing petition by him subscribed; and that the facts therein stated are true to the best of his information and belief.

FRANK M. ESTES.

Sworn to and subscribed before me this 22d day of October, 1895.

My term expires December 17, 1897.

[SEAL] JOSEPH H. ZUMBALEN.

Notary Public within and for the City of St. Louis, State of Missouri.

Supreme Court

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FRANK M. ESTES.

Sworn to and subscribed before me this 22d day of October, 1895.

My term expires December 17, 1897.

[SEAL] JOSEPH H. ZUMBALEN,

Notary Public within and for the City of St. Louis, State of Missouri.

Office Supreme Court U. S.
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IN THE

Supreme Court of the United States.

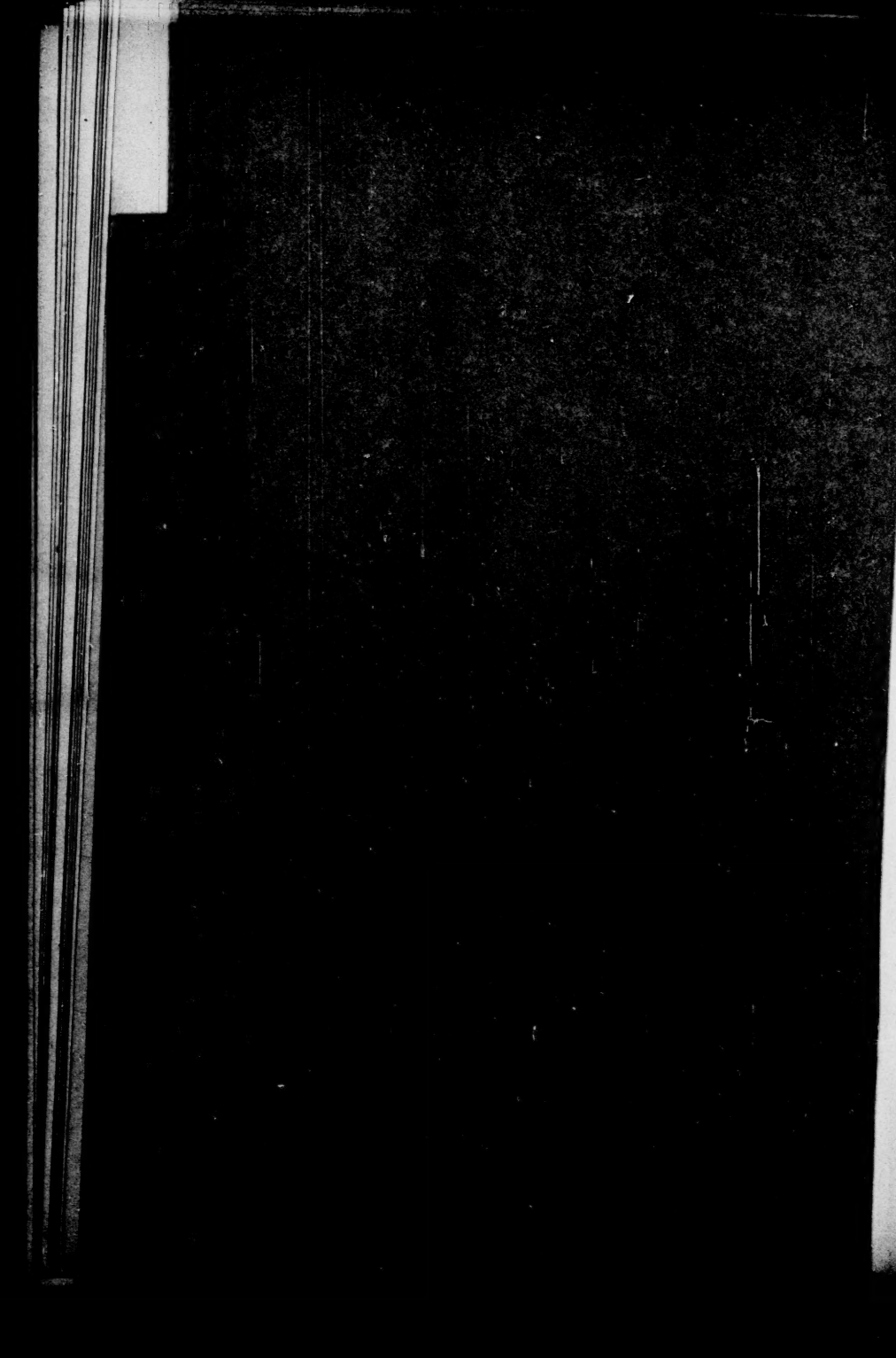
OCTOBER TERM, 1895.

ÆTNA LIFE INSURANCE COMPANY,
Plaintiff in Error.
vs.
NANCY L. FLORIDA,
Defendant in Error.

BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR ON PETITION FOR WRIT OF CERTIORARI.

FRANK M. ESTES,
Counsel for Petitioner.

W. J. KESL, 317 OLIVE ST.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

ÆTNA LIFE INSURANCE COMPANY,
Plaintiff in Error.
vs.
NANCY L. FLORIDA,
Defendant in Error.

BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR ON PETITION FOR WRIT OF CERTIORARI.

STATEMENT

This action originated in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. Nancy L. Florida, citizen of Missouri and resident of said district, sued the Aetna Life Insurance Company, a corporation of and citizen of Connecticut, doing business as an insurance company in Missouri, under the laws of said State relating to foreign insurance companies, upon two policies of life insurance for her benefit, respectively for $5,000.00 and $10,000.00, issued by said company upon the life of her husband, Alonzo K. Florida, who committed suicide.

Petitioner, defendant in said action, pleaded in bar the provision of each policy "if this policy had been obtained by fraud, misrepresentation or concealment, or if the insured shall commit suicide, then this policy shall become null and void;" that the insured obtained the policy by certain alleged fraud, misrepresentation and concealment; that he did commit suicide, and that when he applied for such insurance he contemplated and intended, first, to obtain the insurance and then to commit suicide, in order that his beneficiary, the plaintiff, might profit thereby, which contemplation and intention was unknown at the time to the defendant, and was by the insured concealed from the defendant, whereby, through the consummation of such contemplation and intention, a fraud was attempted to be perpetrated upon the defendant.

Section 5855 of the Revised Statutes of 1889 of the State of Missouri, ostensibly in force when the insurance was effected and ever since, is as follows: "In all suits upon policies of insurance on life hereafter issued by any company doing business in this State it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause that the insured *contemplated suicide* at the time he made his application for the policy, and *any stipulation in the policy to the contrary* shall be void."

Honorable Henry S. Priest, District Judge of the United States for the Eastern Judicial District of Missouri, presided at the trial, and his charge to the jury was predicated upon the theory that the foregoing enactment was valid, that it entered into and became a part of the contracts of insurance in question, and that the only defense available to the defendant was to prove to the satisfaction of the jury that the insured, when he applied for such insurance, "contemplated suicide," by which term the jury were instructed was meant a "complete,

well formed purpose of taking his own life," and that such purpose continued and "culminated by actually killing himself with a view, and for the purpose of defrauding the defendant company."

The defendant excepted to the several portions of such charge embodying the above stated theory, and the plaintiff having recovered judgment against the defendant upon both policies, thereafter duly removed the cause by writ of error to the United States Circuit Court of Appeals for the Eighth Circuit, which court has entered its final judgment affirming the judgment of the trial court, and in its opinion declared that the words "*contemplated suicide*," in the above quoted statute mean "*intended or had resolved to commit suicide.*"

Petitioner applies to the Supreme Court of the United Stated for a writ of certiorari to bring up for its review and determination such final judgment of said United States Circuit Court of Appeals.

POINTS AND AUTHORITIES.

I.

The construction given by the trial and appellate courts to Section 5855 of the Revised Statutes of 1889 of the State of Missouri is erroneous.

R. S. Mo. 1889, Sec. 5855.

Shaw vs. Railroad Co., 101 U. S., 557.

Sutherland on Statutory Construction, Sections 290, 366, 370 and 400.

23 Am. and Eng. Enc. of Law, title "Statutes," pages 357, 383, 385, 386-8.

Worcester's Dictionary, titles, "Contemplated" and "Intent."

Century Dictionary, titles, "Contemplate," "Contemplation," "Intent" and "Intention."

Black's Law Dictionary, titles, "Contemplation" and "Intent."

Burrill's Circ. Ev., 284, and notes.

II.

Section 5855 of the Revised Statutes of 1889 of the State of Missouri, of itself, and under the construction given thereto by the trial and appellate courts, is void, being an invasion of the fundamental rights of liberty and property inherent in the people, which rights are recog-

nized and protected under both the Constitution of the United States and the Constitution of the State of Missouri.

Declaration of Independence.

Dissenting Opinion of Justice FIELD in the Butchers' Union Co. vs. Crescent City Co., 111 U. S. 746.

Wilkinson vs. Leland, 2 Peters, 627.

Cooley's Constitutional Limitations (6th Ed.) pages 49, 208, 209, 431–2, 484.

Constitution of the United States, Amendments V. and XIV.

Constitution of the State of Missouri, Article II., Sections 1, 2, 4, 10, 20. 30 and 32.

Powell vs. Pennsylvania, 127 U. S. 687, and the Dissenting Opinion of Justice FIELD therein.

Giozza vs. Tiernan, 148 U. S., 662.

Story on the Constitution (5th Ed.), Sections 1385, 1950.

State vs. Julow, 31 S. W. (Mo.) 781.

Hare's American Constitutional Law, pages 759–60, 823, 785.

Godcharles vs. Wigeman, 113 Pa. St., 437.

Dent vs. W. Va., 129 U. S. 123.

Ritchie vs. The People, 155 Ill., 98.

Leep vs, St. L., I. M. & S. Ry. Co., 58 Ark, 421.

In re. House Bill No. 203, 39 Pac. (Colo.), 431.

State vs. Loomis, 115 Mo., 307.

Comm. vs. Perry, 155 Mass., 117.

Sedgwick on Construction of Statutory Law, page 138 (n), 151, 643 (n).

State vs. Goodwill, 10 S. E. (W. Va.), 288.

Supreme Commandery, vs. Ainsworth, 71 Ala., 438.

Hartman vs. Keystone Ins. Co., 21 Pa., St., 466.

Horn vs. Anglo-Australian, etc., Co. 7 Jur. U. S. 673.

Dissenting opinion of Justice BREWER in Budd vs. New York, 143 U. S., 551.

People vs. Otis, 90 N. Y., 48.

Board of Education vs. Blodgett, 155 Ill., 441,

Smith vs. National Benefit Society, 123 N. Y., 85.

ARGUMENT.

I.

"In all suits upon policies of life insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void."

R. S. Mo. of 1889, Sec. 5855.

"No statute is to be construed as altering the common law further than its words import."

Shaw vs. Railroad Co., 101 U. S., 557 (565).

"It is not presumed that the Legislature intended to make any innovation upon the common law further than the necessity of the case required. In other words statutes in derogation of it, and especially of a common law right, are strictly construed, and will not be extended by construction beyond their natural meaning. * * * It will be so construed, if possible, as not to interfere with fundamental rights. The best construction of a statute is to construe it as near to the rule and reason of the common law as may be, and by the course which that observes in other cases."

Sutherland on Statutory Construction, Sec. 290.

Statutes against common right are to be construed strictly.

Sutherland on Stat. Con., Sec. 366.

"All statutes for interference with legitimate industries or the ordinary uses of property, or for its removal or destruction for being a nuisance or contributory to public evil, are treated with a conservative regard for the liberty of the citizen in his laudable business, and in the innocent enjoyment of his possession, and generally the rights of property. Such interferences are cautiously justified on principles of the common law, and only in cases of imperative necessity, or under valid statutes plainly expressing the intent."

Sutherland on Stat. Con., Sec. 370.

"Such statutes as take away a common law right, remove or add to common law disabilities, or provide for proceedings unknown or contrary to that law, are construed strictly. The courts cannot properly give force to them beyond what is expressed by their words, or is necessarily implied from what is expressed. There should doubtless be the same strictness of construction of a statute in derogation of an enforceable equity. Statutes are not to be construed as taking away a common law right unless the intention is manifest."

Sutherland on Stat. Con., Sec. 400.

"The presumption is that the Legislature does not intend to change or modify the law beyond what it explicitly declares, either in express terms or by unmistakable implication, for it is not to be supposed that the Legislature will overturn an established principle of law without expressing such intention with irresistible clearness."

23 Am. & Eng. Enc. of Law, 357.

"All statutes which encroach on the personal or property rights of the individual are to be construed strictly."

23 Am. & Eng. Enc. of Law, 383.

"Statutes which prescribe the manner in which persons shall use their private property, or restrict and regulate the disposition thereof, are against common right, and must be construed strictly."

23 Am. & Eng. Enc. of Law, 385.

"Where a statute is inconsistent with the common law, the statute will prevail and the common law must give way; but this will result only from the express language of the statute or from necessary implication, for it is a well-established rule of construction that statutes in derogation of the common law are to be construed strictly.

"And the common law will be held to be no further abrogated than is expressly declared, or the clear import of the *language used absolutely requires.* The law rather presumes that the Legislature did not intend to make any change other than what is specified and plainly pronounced. And even the liberal construction of remedial statutes may be modified by the rule."

23 Am. & Eng. Enc. of Law, 386–8.

The construction given to the statute in question by the trial and appellate courts cannot be harmonized with these plain and clearly applicable rules of construction.

That the right to contract, upon purely personal matters, between persons *sui juris*, is a common law right, is undeniable. That this right is abridged by the statute cannot be doubted. That the primary signification of the word "contemplated" is to consider attentively or to meditate, is conceded by the Appellate Court. That such meaning given to this word in the statute would least infringe upon the fundamental right of freedom of contract is indisputable.

The statute uses the word "contemplated" and not "intended." There is a material distinction. The lexicographers define "contemplated" as meaning "atten-

tively considered;" "thought upon," Worcester's dictionary; "to consider with continued attention; reflect upon; ponder; study; meditate on," Century dictionary; the word "contemplation" is defined as "the act of the mind in consideration with attention;" "continued attention of the mind to a particular subject," Black's law dictionary; "the act of holding an idea continuously before the mind; mental vision; the thinking long of anything in a somewhat passive way," Century dictionary. On the other hand, the word "intend" involves a stronger and more determinative state of mind, to mean; to design: to purpose," Worcester's dictionary. "Intent" is "personal intention; the state of mind in respect of intelligent volition; the voluntary purposing of an act; often distinguishable from the motive which led to the formation of the intent," Century dictionary. "Intent" is the "exercise of intelligent will, the mind being fully aware of the nature and consequences of the act which is about to be done, and with such knowledge, and with full liberty of action, willing and electing to do it." Burrill's Circ. Co., 284, and notes. "Intent" in criminal law and the law of evidence is "purpose; formulated design; a resolve to do or forbear a particular act; aim; determination," Black's law dictionary. "Intention" is "that which is intended, purposed or meant; that for which a thing is made, designed or done; intent, purpose; aim; meaning; desire," and in law, "the fixing of the mind upon the act and thinking of it as one which will be performed when the time comes. *Stephen: Harris.* It depends upon a joint exercise of the will and the understanding," Century dictionary.

That there is an essential difference between the words "contemplated" and "intended" there can be no doubt, and the effect of the decision of the Appellate Court is by judicial construction to read the former word

out of the statute and read the latter in its stead, which is nothing short of judicial legislation.

Had the Legislature purposed to use the word "intended" it would have done so. Instead, the word "contemplated" was enacted in the statute, and, under the rules of construction above stated, the courts cannot properly enlarge, but must rather restrict, the statute.

It thus appeared that under the contract, the statute and the issues, the insurance company would sustain the burden upon it as to this issue by showing that the insured in effecting his insurance, did so, not with the definitely formed purpose or design, fully determined and fixed to commit suicide, but would sustain the full measure of the burden by showing that the insured at that time attentively considered or thought upon committing suicide without necessarily, and at all events, having determined to do so.

It was not, in this view, necessary for the insurance company to show that the insured effected this insurance with the deliberate *purpose* to commit suicide; it was sufficient to show that he was "considering with attention" the project of suicide, and effected the insurance with the design that in case his contemplation should ripen into actual perpetration of suicide, then his beneficiary should be provided for out of the proceeds of the insurance. Hence it follows that the theory expressed throughout the several portions of the charge to the jury bearing on this point, that "contemplated suicide" meant a pre-determined, well formed purpose of suicide, is erroneous, and those portions of the charge expressing this conception were erroneous. Also, it follows that the conclusion of the Appelle Court, that the words words "contemplated suicide" meant "intended, or had resolved to commit suicide," is erroneous, and its judgment should for that reason be reversed.

II.

The rights of liberty and property are fundamental, that is, inherent in every free people, and superior to even their written organic law. They exist before government and have ever been recognized as the endowments conferred upon mankind by the very source and nature of their being.

The founders of our nation, before the formation of our national constitution, recognized the higher essence of these rights in language which the general approval of mankind has immortalized.

We hold these truths to be self evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

Declaration of Independence.

Upon the foundation of the Declaration of Independence was erected the fabric of our National Government, in the same generation and almost by the same hands, through the medium of the Constitution of the United States, in which these truths promulgated in the Declaration of Independence were so absolutely accepted that at first even their re-statement was regarded as unnecessary.

As to the constitutional recognition and guaranty of fundamental rights, Mr. Justice FIELD has written:

"As in our intercourse with our fellow men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed

than in the Declaration of Independence, that new evangel of liberty to the people: 'We hold these truths to be self-evident'—that is, so plain that their truth is recognized upon their mere statement—'that all men are endowed'—not by edicts of Emperors, or decrees of Parliament, or Acts of Congress, but 'by their Creator, with certain inalienable rights'—that is, rights which cannot be bartered away, or given away, or taken away, except in punishment of crime—'and that among these are life, liberty, and the pursuit of happiness, and to secure these'—not grant them, but secure them—'governments are instituted among men, deriving their just powers from the consent of the governed.'"

"Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or avocation, *in any manner not inconsistent with the equal rights of others*, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment."

"The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex and condition, is a distinguishing privilege of citizens of the United States and an essential element of that freedom which they claim as their birthright."

Butchers' Union Co. vs. Crescent City Co., 111 U. S., 746 (756-7).

Justice STORY declared the higher law in unmistakable terms:

"The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least, no court of justice in this country would be warranted in assuming the power to violate and disregard them; a power so repugnant to the common principles of justice and civil liberty, lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and well being without very strong and strict expressions of such intention."

Wilkinson vs. Leland, 2 Peters, 627 (657).

A distinguished writer upon constitutional limitations thus treats of these rights:

"In considering State constitutions we must not commit the mistake of supposing that, because individual rights are granted and protected by them, they must also be considered as owing their origin to them. These instruments measure the powers of the rulers, but they do not measure the rights of the governed. What is a constitution, and what are its objects? It is easier to tell what it is not than what it is. It is not the beginning of a community, nor the origin of private rights; it is not the fountain of law, nor the insipient state of government; it is not the cause, but consequence, of personal and political freedom; it grants no rights to the people, but is the creature of their power, the instrument of their convenience. Designed for their protection in the enjoyment of the rights and powers which they possessed before the constitution was made, it is but the framework of the political government, and necessarily based upon the pre-existing condition of laws, rights, habits and modes of thought. There is nothing primitive in it; it is all ~~claimed~~ derived from a known source. It pre-supposes an organized society, law, order,

property, personal freedom, a love of political liberty and enough of cultivated intelligence to know how to guard it against the encroachments of tyranny. A written constitution is in every instance a limitation upon the powers of government in the hands of agents; for there never was a written republican constitution which delegated to functionaries all the latent powers which lie dormant in every nation and are boundless in extent and incapable of definition."

Cooley's Constitutional Limitations (6th Ed.), 49.

"The maxims of *Magna Charta* and the common law are the interpreters of constitutional grants of power, and those acts which by those maxims, the several departments of government are forbidden to do, cannot be considered within any grant or apportionment of power which the people in general terms have made to those departments."

Cooley's Const. Lim. (6th Ed.) 208.

"Nor, where fundamental rights are declared by the constitution, is it necessary at the same time to prohibit the legislature in express terms from taking them away. The declaration is itself a prohibition, and is inserted in the constitution for the express purpose of operating as a restriction upon legislative power."

Cooley's Const. Lim. (6th Ed.) 209.

Numerous constitutional provisions have been made for the security of the people in these fundamental rights.

"No person * * * shall be deprived of life, liberty or property, without due process of law."

Const. U. S., V. Amendment.

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Const. U. S., XIV. Amendment, Sec. 1.

"That all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole."

Constitution Mo., Art. II., Section 1.

"That the people of this State have the inherent, sole and exclusive right to regulate the internal government and police thereof, *and to alter and abolish their Constitution and form of government* whenever they may deem it necessary to their safety and happiness. Provided, such change be not repugnant to the Constitution of the United States."

Const. Mo., Art. II., Sec. 2.

"That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty and the enjoyment of the gains of their own industry; that to give security to these things is the principal office of government, and that when government does not confer this security it fails of its own chief design."

Const. Mo., Art. II., Section 4.

"The courts of justice shall be open to every person, and certain remedy afforded for every injury to person,

property or character, and that right and justice shall be administered without sale, denial or delay."

Constitution of Missouri, Art. II., Section 10.

"That no private property can be taken for private use, with or without compensation, unless by the consent of the owner."

Constitution of Missouri, Art. II., Section 20.

"No person shall be deprived of life, liberty or property without due process of law."

Constitution of Missouri, Art. II., Section 30.

"The enumeration in this constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people."

Const. Mo., Art. II., Sec. 32.

Petitioner contends that the rights of liberty and property, fundamental in nature and secured by such explicit constitutional recognition, are unwarrantably abridged and deprived by the statute in question, which is a mere arbitrary enactment, without foundation in any lawful governmental power.

The extent to which these rights are protected under the foregoing and similar constitutional provisions has been the subject of much exposition by jurists.

"If the incompatability of the constitution and the statute is clear or palpable, the courts must give effect to the former. And such would be the duty of the court if the State Legislature, under the pretense of guarding the public health, the public morals, or the public safety, should invade the rights of life, liberty or property or other rights, secured by the supreme law of the land."

Powell vs. Pennsylvania, 127 U. S., 687.

"It is the clause declaring that no State shall 'deprive any person of life, liberty, or property without due process of law,' which applies to the present case. This provision is found in the constitution of nearly all the States, and was designed to prevent the arbitrary deprivation of life and liberty, and the arbitrary spoilation of property."

Dissenting opinion of Justice FIELD in Powell vs. Pa., 127 U. S., 687.

"Undoubtedly it (the Fourteenth Amendment to the Federal Constitution) forbids any arbitrary deprivation of life, liberty or property, and secures equal protection to all under like circumstances in the enjoyment of their rights."

Giozza vs. Tiernan, 148 U. S., 662.

"It should be observed of the terms "life," "liberty" and "property" that they are representative terms, and are intended and must be understood to cover every right to which a member of the body politic is entitled under the law. The limbs are equally protected with the life; the right to the pursuit of happiness in any legitimate calling or occupation is as much guaranteed as the right to go at large and move about from place to place. The word "liberty" here employed implies the opposite of all those things which, beside the deprivation of life and property, were forbidden by the Great Charter. In the charter as confirmed by Henry III. no free man was to be seized, or imprisoned, or deprived of his liberties or free customs, or outlawed or banished, or any ways destroyed except by the law of the land. The rights thus guaranteed are something more than the mere privileges of locomotion; the guarantee is the negation of arbitrary power in every form which results in a deprivation of right. * * * The word * * embraces all our liberties—personal,

civil and political. None of them are to be taken away except in accordance with established principles; none can be forfeited except upon the finding of legal cause after due inquiry."

II. Story on the Constitution (5th Ed.), Section 1950. By Thomas M. Cooley.

The Supreme Court of Missouri, through Judge SHERWOOD, thus expounds the constitutional protection extended to life, liberty and property:

"It will be noted that the rights of life, liberty and property are grouped together in the same sentence; they constitute a trinity of rights, and each, as opposed to the unlawful deprivation thereof, is of equal constitutional importance. With each of those rights, under the operation of a familiar principle, every auxiliary right, every attribute necessary to make the principal right effectual and valuable in its most extensive sense, pass as incidents of the original grant. The rights thus guaranteed are something more than mere privileges of locomotion; the guaranty is the negation of arbitrary power in every form which results in a deprivation of a right."

State vs. Julow, 31 S. W. (Mo.), 781.

"As was observed in Wynehamer vs. The People (13 N. Y., 378, 433), 'property' is the right to possess, use, enjoy, and dispose of a thing. The term, although frequently applied to the thing itself, in strictness means only the rights of the owner in relation to it. A man, therefore, may be deprived of his property in a chattel without its being seized or physically destroyed or taken from his possession. *Whatever subverts his rights in regard to it, annihilates his property in it.* A law providing in regard to any article in which a right of property is recognized, that it shall not be sold, used, or kept in

any place whatsoever in the state, would fall directly within the letter of the constitutional inhibition, as it would in the most effectual manner possible deprive the owner of his property, without the interposition of a court or the use of any process whatever."

II. Hare's Am. Const. Law, 759-60.

"The sections of the act are unconstitutional and void, inasmuch as by them an attempt has been made to to do what in this country cannot be done, that is, prevent persons who are *sui juris* from making their own contracts. The laborer may sell his labor for what he thinks best, whether money or goods, and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges, and consequently vicious and void."

Godcharles vs. Wigemann, 113 Pa. St., 437.

It may be difficult, if not impossible, to give to the terms "due process of law," a definition which will embrace every permissible exertion of power affecting private rights and exclude such as are forbidden. They come to us from the law of England, from which country our jurisprudence is to a great extent derived, and their requirement was there designed to secure the subject against the arbitrary action of the crown and place him under the protection of the law.

They were deemed to be equivalent to "the law of the land."

In this country the requirement is intended to have a similar effect against legislative power, that is, to secure the citizen against any arbitrary deprivation of his rights, whether relating to his life, liberty or his property. The great purpose of the requirement that legislation shall be general in its operation is to exclude everything that is

arbitrary and capricious in effecting the rights of the citizen."

Dent vs. W. Va., 129 U. S., 123.

"Perhaps no definition is more often quoted than that given by Mr. Webster in the Dartmouth College case: "By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities, under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not therefore to be considered the law of the land." * * * "The words 'by the law of the land,' as used in the Constitution, do not mean a statute passed for the purpose of working the wrong. That construction would render the restriction absolutely nugatory, and turn this part of the Constitution into mere nonsense. The people would say to the two houses, 'You shall be vested with the legislative power of the State, but no one shall be disfranchised or deprived of any of the rights or privileges of a citizen, unless you pass a statute for that purpose. In other words, you shall not do the wrong unless you choose to do it.'" When the law of the land is spoken of, "undoubtedly a pre-existing rule of conduct" is intended, "not an *ex post facto* rescript or a decree made for the occasion. The design" is "to exclude arbitrary power from every branch of the government; and there would be no exclusion if such rescripts or decrees were to take effect in the form of a statute."

Cooley's Constitutional Limitations (6th Ed.), 431-2.

"The privilege of contracting is both a liberty and a property right. (Frorer vs. The People, 141 Ill., 171.)

Liberty includes the right to acquire property, and that means and includes the right to make and enforce contracts. (The State vs. Loomis, 115 Mo., 307.) The right to use, buy and sell property, and contract in respect thereto is protected by the constitution. * * * In this country the legislature has no power to prevent persons who are *sui juris* from making their own contracts. * * * The protection of property is one of the objects for which free governments are instituted among men. (Const. of Ill., Art. 2, Sec. 1.) The right to acquire, possess and protect property includes the right to make reasonable contracts. (Comm vs. Perry, 155 Mass., 117.) And when an owner is deprived of one of the attributes of property, like the right to make contracts, he is deprived of his property within the meaning of the constitution. (Matter of Application of Jacobs, 98 N. Y., 98.) The fundamental rights of Englishmen, brought to this country by its original settlers and wrested from time to time in the progress of history from the sovereigns of the English nation, have been reduced by Blackstone to three principal or primary articles: "The right of personal security, the right of personal liberty, the right of private property." (1 Blacks. Com., marg., page 129.) The right to contract is the only way by which a person can rightfully acquire property by his own labor. "Of all the rights of persons it is the most essential to human happiness." (Leep vs. St. L. I. M. & S. R'y Co., 58 Ark., 407.)

"This right to contract, which is thus included in the fundamental rights of liberty and property, cannot be taken away "without due process of law." The words "due process of law" have been held to be synonymous with the words "law of the land." (The State vs. Loomis, *supra*; Frorer vs. The People, *supra*. Blackstone says:

"The third absolute right, inherent in every Englishman, is that of property, which consists in the free use,

enjoyment and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. (1 Black Com., page 138; *ex parte* Jacobs, 98 N. Y., 98). The 'law of the land' is 'general public law binding upon all the members of the community, under all circumstances, and not partial or private laws, affecting the rights of private individuals or classes of individuals.' (Millett vs. The People, 117 Ill., 294). 'The 'law of the land' is the opposite of "arbitrary, unequal and partial legislation.' (The State vs. Loomis, *supra.*) * * *

"But aside from its partial and discriminating character, this enactment is a purely arbitrary restriction upon the fundamental right of the citizen to control his or her own time and faculties. It substitutes the judgment of the Legislature for the judgment of the employer and employe in a matter about which they are competent to agree with each other. It assumes to dictate to what extent the capacity to labor may be exercised by the employe, and takes away the right of private judgment as to the amount and duration of the labor to be put forth in a specified period. When the Legislature thus undertakes to impose an unreasonable and unnecessary burden upon any one citizen or class of citizens it transcends the authority entrusted to it by the Constitution, even though it imposes the same burden upon all other citizens or classes of citizens. General laws may be as tyrannical as partial laws. A distinguished writer upon constitutional limitations has said that general rules may sometimes be as obnoxious as special, if they operate to deprive individual citizens of vested rights, and that, while every man has a right to require that his own controversies shall be judged by the same rules which are applied in the controversies of his neighbors, the whole community is also entitled, at all times, to demand the protection of the ancient principles which shield private rights against arbitrary interference, even though such interference may be under a rule impar-

tial in its operation. (Cooley on Const. Lim., 5th Ed., top page 434, marg. page 355; Bank of Columbia vs. Okely, 4 Wheat., 235.) Section 1 of Article 2 of the Constitution of Illinois provides as follows: "All men are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed." Liberty, as already stated, includes the right to make contracts, as well with reference to the amount and duration of labor to be performed, as concerning any other lawful matter. Hence, the right to make contracts is an inherent and inalienable one, and any attempt to unreasonably abridge it is opposed to the Constitution. As was aptly said in Leep vs. St. Louis, I. M. & S. Ry. Co., *supra*: "Where the subject of the contract is purely and exclusively private, unaffected by any public interest or duty to person, to society or government, and the parties are capable of contracting, there is no condition existing upon which the Legislature can interfere for the purpose of prohibiting the contract or controlling the terms thereof."

Ritchie vs. The People, 155 Ill., 98 (104–106).

"We have thus far spoken of the limitations that can be imposed on the right to contract. We have seen that the power of the Legislature to do so is based in every case *on some condition*, and not on the absolute right to control. We think it is obvious that the right to contract cannot be limited by arbitrary legislation which exists on no reason upon which it can be defended; for, if it could, the right would cease to exist and become a license revocable at the will of the Legislature and the government would become a despotism in theory, if not in fact. Such a power cannot exist, for if it could, it would be

subversive of the right to enjoy and defend liberty, to acquire and possess property and to pursue happiness, declared to be inalienable by the Constitution of this State."

Leep vs. St. L., I. M. & S. Ry. Co., 58 Ark., 421.

Of a proposed enactment to fix arbitrarily the mode of weighing coal at mines and to determine the compensation to be paid the miners, the Supreme Court of Colorado declared: "In so far as the bill attempts to abridge the right of contract between parties in regard to matters personal to themselves, and to deprive them of the power to fix the mode in which compensation for mining coal shall be ascertained, it is clearly an infringement of these constitutional guarantees." The court was referring to the constitutional State and Federal limitations upon the deprivations of "life, liberty and property," without due process of law."

In re House Bill No. 203, 39 Pac. Rep., 431.

"From the definition of 'due process of law,' or its equivalent 'law of the land,' it must be evident that this constitutional safeguard condemns arbitrary, unequal and partial legislation, and it is equally clear that the right to make contracts and have them enforced, as others may, is one of the rights so secured to every citizen." If the legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts or to receive conveyances, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bounds of legislative power, even though no express constitutional

provision could be pointed out with which it would come in conflict."

Cooley Const. Lim. (6th Ed.) 484.

"There can be no doubt but the legislature may regulate the business of mining and manufacturing so as to secure the health and safety of employes, but that is not the scope of the two sections of the statutes now in question. They single out those persons who are engaged in carrying on the pursuits of mining and manufacturing, and say to such persons, you cannot contract for labor payable alone in goods, wares and merchandise. The former, the merchant and numerous contractors, employing thousands of men, may make such contracts, but you cannot."

They say to the mining and manufacturing employees, though of full age and competent to contract, still you shall not have the power to sell your labor for meat and clothing alone as others may.

It will not do to say these sections simply regulate payment of wages, for that is not their purpose. They undertake to deny to the person engaged in the two designated pursuits the right to make and enforce the most ordinary, every-day contract—a right accorded to all other persons.

The denial of the right to contract is based upon a classification which is purely arbitrary, because the ground of the classification has no relation whatever to the natural capacity of persons to contract."

State of Mo. vs. Loomis, 115 Mo., 307 (315).

"Liberty, as we have seen, includes the right to contract as others may, and to take that right away from a class of persons following lawful pursuits is simply depriving such persons of a time-honored right which the constitution undertakes to secure to every citizen.

We conclude that these sections are not "due process of law" within the meaning of the constitution.

State vs. Loomis, *supra*.

"If the statute be held to forbid the making of such contracts and to permit the hiring of weavers only upon terms that prompt payment shall be made of the price for good work, however badly their work may be done, and that the remedy of the employer for their derelictions shall be only by suit against them for damages, it is an interference with the right to make reasonable and proper contracts in conducting a legitimate business which the constitution guarantees to every one when it declares that he has a "natural, inalienable right of acquiring, possessing and protecting property."

Commonwealth vs. Perry, 155 Mass., 117.

"Law of the land" means due process of law, not an arbitrary act of the Legislature.

Sedgwick on Construction of State Law, p. 138 (N).

"A statute which, without some controlling public necessity and for public objects, seeks to affect or interfere with vested rights of private property, is beyond the true limits of legislative power."

Sedgwick Con. Stats , p. 151.

"I am clearly of opinion that the third section of the act is unconstitutional."

In arriving at this conclusion we have not been unmindful that the power of the courts to condemn legislative acts as unconstitutional is one of great delicacy, and is to be exercised with extreme caution. But, as said by

Chan. Kent (1 Kent, 450), "It is only by the free exercise of this power that courts of justice are enabled to repel assaults and protect every part of the government and every member of the community from undue and destructive innovations upon their charter rights."

State of W. Va. vs. Goodwill, 10 So. East. Rep., 288.

That no right of the citizen can be in strictness called "absolute" we freely admit. Individual rights must, in any free government, be held in subordination to the lawful restrictions which the public good demands. The safety and welfare of society at large is the peculiar charge of government. But that charge must not be held the justification for a mere arbitrary invasion of the fundamental rights of the people, rights inherent in man from the nature of his being, forming the essential basis of free government, and protected by constitutional prohibitions against invasion.

No deprivations of the rights of liberty and property (in which private freedom of contract is included), can be justified except upon grounds of the higher public right and need. Every legislative restriction upon the private right of freedom of contract which has been sanctioned by the courts of this country has been based upon some well recognized higher public right and public need—the police power, the protection of public interests in property or business devoted to public service, eminent domain, protection of persons dependant or under legal disability, prevention of crime, preservation of morals and the like.

There is no such superior public right or need which can be involved here to sustain the statute in question.

No consideration of public policy can support this statute. The contract of insurer and insured, that suicide shall avoid policies of life insurance, acts as a prevention of suicide and thus tends to the public good. The abro-

gation or abridgement of such contracts by statute tends to render every contract of life insurance an inducement to suicide, just in proportion as the power to protect itself against suicide of the insured is denied to the insurance company or restricted in its exercise.

The stipulation against suicide of the insured in contracts of life insurance is so consonant with the general principles of the public welfare that on grounds of public policy it has even been laid down that such a stipulation will be read into the contract by implication of law, though it be not expressly inserted, and if inserted, it is no more than the law would so imply.

Supreme Commandary vs. Ainsworth, 71 Ala., 436 (445-7.)

Hartman vs. Keystone Ins. Co., 21 Pa. St., 466 (479.)

Horn vs. Anglo-Australian, etc., Co., 7 Jur. N. S. 673.

A contract of life insurance is purely a personal one between parties *sui juis* and capable of agreeing with each other fully and freely upon the subject. It is not affected by any peculiarly public condition. Nothing but the arbitrary fiat of the legislature can be invoked as the reason for State interference between the parties to such a contract.

"The right to contract cannot be limited by arbitrary legislation which rests upon no reason upon which it can be defended; for, if it could, the right would cease to exist and become a license revocable at the will of the legislature, and the government would become a despotism in theory, if not in fact."

Leep vs. St. L. I. M. & S. Ry. Co., 58 Ark., 421.

"Where the subject of contract is purely and exclusively private, unaffected by any public interest or duty to person, to society or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract, or controlling the terms thereof."

Leep vs. St. L. I. M. & S. Ry. Co., *supra.*

Ritchie vs. The People, 155 Ill., 98 (106.)

Commonwealth vs. Perry, 155 Mass., 117.

"An attempt has been made by the Legislature to do what in this country cannot be done, that is, prevent persons who are *sui juris* from making their own contracts."

Godcharles vs. Wigeman, 113 Pa. St., 437.

This statute tends to the extreme of paternalism, which is the only possible public reason for its being. The Legislature says to insurers: "You have been taking too wide an advantage of your right of freedom of contract to protect yourselves against the suicide of the insured." To the insured it says: "You have foolishly exercised your right of freedom of contract, and have thus given insurers an advantage." To both it says: "You shall no longer enjoy the right of freedom of contract upon this subject, except to the limited extent which the wisdom of the Legislature may leave to you. The beneficiary of the insured shall have the benefit of, and the courts may enforce for him, the stipulations in his favor, but to the insurer the courts shall be closed as to this clause in its favor, which by legislative *ipse dixit* is to be void, except to the extent the Legislature has or may provide."

"The paternal theory of government is to me odious. The utmost possible liberty to the individual and the fullest possible protection to him and his property is both the limitation and duty of government."

Dissenting opinion Justice BREWER in Budd vs. New York, 143 U. S., 551.

Even could this enactment be regarded as a "general law" (which it manifestly is not) it would still be obnoxious. We may well employ the language of the Supreme Court of Illinois:

"Aside from its partial and discriminating character this enactment is a purely arbitrary restriction upon the fundamental right of the citizen to control his or her own time and faculties. * * * When the Legislature thus undertakes to impose an unreasonable and unnecessary burden upon any one citizen, or class of citizens, it transcends the authority entrusted to it by the constitution, even though it imposes the same burden upon all other citizens or classes of citizens. General laws may be as tyrannical as partial laws."

Ritchie vs. The People, 155 Ill., 98 (105).

"The bills of rights in the American constitutions forbid that parties shall be deprived of property except by the law of the land; but if the prohibition had been omitted a legislative enactment to pass one man's property over to another would nevertheless be void. If the act proceeded upon the assumption that such other person was justly entitled to the estate, and therefore it was transferred it would be void, because judicial in its nature; and if it proceeded without reasons it would be equally void, as neither legislative nor judicial, but a mere arbitrary *fiat*."

Cooley's Const. Lim. (6th Ed.), 208.

The constitution of Missouri (Art. II., Sec. 4) expressly declares the principal office of government is to secure the rights of life, liberty and property, and unless it performs this office "it fails of its own chief design."

It also (Art. II., Sec. 10) declares that the courts of justice "shall be open to every person, and certain remedy afforded for every injury to person, property or character."

Yet in this statute the Legislature decrees that as to stipulations respecting the suicide of the insured the courts shall be open to the beneficiary of the insured for every clause of the contract in his favor, but as to the insurer, the courts shall be closed as to all stipulations in its favor, except to a limited extent, and that such stipulations in the contract in its favor shall not only be non-enforceable but "shall be void."

Can such a statute be said to be consonant with the above stated "chief design" of government? Is it thus that the courts of justice are to be kept "open to every person?" Is this the "certain remedy" for every injury to property guaranteed by this constitution?

"The term "property," as used in the constitutional prohibition, includes every right to the use, possession, enjoyment or recovery of land, goods or money which the law will vindicate, if assailed, or that can be enforced as a defense or cause of action."

II Hare's Am. Const. Law, 823.

"It is perfectly clear that any law which enlarges, abridges or in any manner changes the intention of the parties, resulting from the stipulations in the contract, necessarily impairs it."

Story on Const., Sec. 1385.

People vs. Otis, 90 N. 7, 48 (52).

"If the clause prohibiting the laws impairing the obligation of contracts applies only to retroactive legislation, that which forbids deprivation without due process guards

the future as well as the present and *precludes any statute taking away the remedy* for injuries to persons not yet born and rights subsequently acquired, or rendering it less effectual by limiting the amount of damages."

II Hare's Am. Const. Law, 785.

"Interference with vested rights by curative statutes or by any other legislative act is prohibited by the constitutional guarantees of due process of law, unless, perhaps, the interests of society may, in some extreme and exceptional cases, make such interference necessary."

Sedgwick Const. Stats., p. 643 (N.).

The Supreme Court of Illinois has recently approved the forcible declaration of Justice BRADLEY, concurred in by Justice HARLAN, in *Campbell vs. Holt*, 115 U. S., 620, as follows:

"The words 'life, liberty and property' are constitutional terms, and are to be taken in their broadest sense. They indicate the three great subdivisions of all civil right. The term 'property' in this clause embraces all valuable interests which a man may possess outside of himself—that is to say outside of his life and liberty. *It is not confined to mere tangible property, but extends to every specie of vested right.* In my judgment it would be a very narrow and technical construction to hold otherwise. In an advanced civilization like ours a very large proportion of the property of individual is not visible and tangible, but consists of rights and claims against others or against the government itself. Now, an exemption from a demand or an immunity from prosecution in a suit is as valuable to the one party as the right to the demand or to prosecute the suit is to the other. The two things are co-relative, and to say that the one is protected by constitutional guarantees and that the other is not seems to me almost an absurdity. One right is as valuable as

the other. My property is as much imperiled by an action against me for money as it is by an action against me for my land or my goods. It may involve and sweep away all that I have in the world. Is not a right of defense to such an action of the greatest value to me? If it is not property in the sense of the constitution, then we need another amendment to that instrument. * * * This court has frequently held that to deprive a man of a remedy for enforcing a contract is itself a mode of impairing the validity of the contract. And, as before said, the right of defense is just as valuable as the right of action. It is the defendant's remedy. There is really no difference between the one right and the other in this respect."

Board of Education vs. Blodgett, 155 Ill., 441 (448-450).

The Constitution of Missouri (Art. II., Section 20) forbids the taking of private property for private use, "unless by the consent of the owner."

This Missouri statute, under consideration, declares that upon contracts of life insurance in case of suicide of the insured, the property of the insurer shall be taken for the benefit of the beneficiary of the insured, notwithstanding that the insurer may have refused to consent and notwithstanding that both insurer and insured may have agreed that this should not be done, and the only relief or escape vouchsafed the insurer is that the insured "contemplated" or "intended or had resolved to commit" suicide when he effected the insurance, in short, unless the insurer could prove that the contract was conceived and culminated in fraud on the other side and was therefore no contract at all; a defense which under the genius of free institutions and according to the universal principle

of Anglo-Saxon jurisprudence, would be open to the insurer, with or without the aid of statute.

Smith vs. National Benefit Society, 123 N. Y., 85.

It is a matter of public knowledge that within the past few years State legislatures in this country have exercised and exhibited a growing tendency to exercise their legislative powers in providing arbitrary restrictions upon insurance contracts and arbitrarily substituting the will of the Legislature instead of the expressed will of the contracting parties.

The extent and diverse character of these arbitrary infringements upon the rights of the parties to insurance contracts is exhibited profusely in the statute books and law reports of nearly every State in the Union. The importance and magnitude of the life insurance business in this country and the incalculable value to the insurers of the right which petitioner is here seeking to enforce, characterize the proceedings here in question as eminently of the class which should be finally determined by the Supreme Court of the land.

We respectfully ask that the petition for *certiorari* be granted.

FRANK M. ESTES,

For Petitioner, the Aetna Life Insurance Co.

Supreme Court
FILED
NOV 11 1895
JAMES H. McKENNEY
CLERK

797

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

AETNA LIFE INSURANCE CO.
Plaintiff in Error,
vs.
NANCY L. FLORIDA,
Defendant in Error.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR ON PETITION FOR WRIT OF CERTIORARI.

L. R. WILFLEY,
Counsel for Defendant in Error.

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STATEMENT.

This is an application for a writ of *certiorari* in which this court is requested to review a case involving the constitutionality and construction of a statute which is found in only one State in the Union, namely, Missouri, the constitutionality of which was not questioned in the trial court, and concerning the construction of which there has been no difference of opinion whatever among the judges of the Court of Appeals or the Circuit Court.

In support of this petition, counsel for plaintiff in error, in his printed brief, relies mainly on the proposition that the statute involved in this case is unconstitutional. An examination of the record discloses the fact that no constitutional question was raised or even suggested in the trial court, and a glance at the Act of Congress creating the Court of Appeals discloses the further fact that that court has no jurisdiction whatever in cases involving constitutional questions. The situation then is this: plaintiff in error now comes to this court with the request that it review a case, basing its application on a question which was not raised in the trial court and over which the court whose rulings it here seeks to have reviewed has no jurisdiction. Had the question of the constitutionality of the statute been properly raised in the Circuit Court plaintiff would have had its appeal to this court direct. Having forfeited this privilege, by reason of its failure to raise the question at the proper time, we submit that plaintiff in error is not in a position to accomplish indirectly through the medium of a court that has no jurisdiction what its own negligence has precluded it from doing directly. After eliminating the constitutional question it will be found that the only remaining proposition in support of plaintiff's petition is that the Circuit Court and Court of Appeals erred in their interpretation of the statute involved in this case.

This suit is on two policies of life insurance on the life of Alonzo K. Florida, executed by plaintiff in error, and delivered to defendant in error, wife of Alonzo K. Florida, within the State of Missouri.

Written applications were made for these policies by said Florida—the first on *July 25, 1891*, and the second on *June 24, 1892;* the policies executed and delivered on said applications bear date respectively, July 30, 1891, and July 12, 1892. By their terms the defendant promised to pay in and by the first of said policies $5,000.00,

and in and by the second of said policies $10,000.00, to the defendant in error herein, wife of said Florida, within ninety days after satisfactory proof of the death of said Florida.

Alonzo K. Florida died by his own hand on the 27th day of April, 1893, *one year and nine months after the date of application for the first policy in question and ten months after the date of the application for the second.*

Satisfactory proofs of death were furnished defendant on the 18th day of July, 1893.

During all this time from and after the 30th day of July, 1891, to the date of his death, the defendant in error herein, and the said Florida, duly paid all premiums and otherwise performed each and all the conditions and provisions of said policies required of them.

Plaintiff in error refused to pay and suit was instituted in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. The petition is in two counts based each on one of said policies.

Plaintiff in error herein pleaded in bar the clause in each contract which provided that if the assured committed suicide the policies became null and void, and stated further that at the time of making said application for said insurance, said Florida contemplated and intended to secure the contracts of insurance in question with the intention soon thereafter to take his own life.

The section of the statutes of Missouri relating to suicide and its effect on life insurance contracts, which was in force at the time the contracts in question were executed, as well as at the time of the trial of this case, is as follows:

"In all suits upon policies of life insurance on life hereafter issued by any company doing business in this State it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury try-

ing the cause that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void" (2 R. S. Mo., 1889, Sec. 5855).

The trial court charged the jury that there was but one issue in this case, and that was whether the assured at the time he made application for the policies of insurance involved in this suit contemplated suicide: and by contemplated was meant that there was a complete, well formed purpose of taking his own life, and that purpose culminated by actually killing himself with a view, and for the purpose of actually defrauding the defendant company out of the money stipulated in the policies to be paid.

A trial was had on this issue and resulted in a verdict and judgment for defendant in error on each of the two counts of the petition, aggregating the total sum of $15,864.84.

The case was appealed to the United States Circuit Court of Appeals for the Eighth Circuit, the principal assignment of error being the above mentioned charge of the trial court construing the above section of the Missouri Statutes.

The case was thoroughly argued both orally and by brief, and after having been carefully considered by a full bench the judgment of the trial court was affirmed, Judges Caldwell, Sanborn and Thayer all concurring with the trial judge, Honorable H. S. Priest, that the word "*contemplated*," as used in the Statutes, means "*intended or had resolved upon.*"

The plaintiff in error now applies to this Honorable Court for a writ of *certiorari* to bring up for its review and determination such final judgment of the said Court of Appeals of the United States.

POINTS AND AUTHORITIES.

I.

It is solely questions of gravity and importance that the power of this court to require a case to be certified, in which the judgment and decree of the Court of Appeals is made final, can properly be invoked.

Law Ob Bew, Petitioner, 141 U. S., 587.

In re Woods, Petitioner, 143 U. S., 202.

II.

The only question involved in this case is the construction of a local statute concerning which there has been no difference of opinion among the judges of the Circuit Court and the Court of Appeals. See Record.

III.

The provision in question is not found in the statutes of any other State in the Union.

IV.

The constitutional question relied upon by plaintiff in error in support of this application was not raised in the trial court. See record.

V.

Had the question been properly raised in the Circuit Court the Court of Appeals could not have passed upon it for want of jurisdiction.

See act establishing Circuit Court of Appeals, 26 Stat. L. 826, Sec. 6.

VI.

Plaintiff in error, in order to get the question of the constitutionality of the statute properly before this court should have raised it in the trial court and then prosecuted its appeal to this court direct.

26 Stat. L. 826, Sec. 5.

VII.

Plaintiff in error being a foreign corporation, is not in a position to question the constitutionality of the laws of the State of Missouri.

Paul vs. Virginia, 8 Wall., 168.

Ducat vs. Chicago, 10 Wall., 410.

Chicago, etc., Ins. Co. vs. Needles, 113 U. S., 574.

State vs. Phoenix Ins. Co., 92 Tenn., 420.

Bank of Augusta vs. Earle, 13 Peters, 586.

Doyle vs. Continental Ins. Co., 94 U. S., 535.

VIII.

The business of life insurance, by reason of its magnitude and nature, is a subject which the State can regulate and control in the exercise of its police powers; hence the statute in question is constitutional.

Munn vs. Ill., 94 U. S., 123.

Budd vs. New York, 143 U. S., 533.

People vs. Budd, 117 N. Y., 1.

Com. Appellant vs. Vrooman, 164 Pa., 306.

Dugger *et al.* vs. Mechanics' & Travelers' Ins. Co. (Tenn.)

Powell vs. Pa., 127 U. S., 684.

IX.

The construction placed upon the statute involved in this case is correct.

See Record.
Opinion of Court of Appeals.
Charge of Circuit Court.

Smith vs. National Benefit Society, 123 N. Y., 85.

Century Dictionary, p. 1223.

Black's Law Dictionary, p. 263.

Jones vs. Howland, 49 Mass., 377.

Buckingham vs. McLeane, 13 How., 99.

ARGUMENT.

I

The petition is based upon two propositions:

First. It is contended that what is known as the suicide section of the Missouri Statutes relating to life insurance, which provides that suicide, except when contemplated by the assured at the time the policy is applied for, is a risk which all insurance companies doing business in the State of Missouri must take, is unconstitutional and void, as being in violation of the rights of "liberty" and "property" (and the right of contract incident thereto) and "due process of law" guaranteed by the Constitution of Missouri and of the United States.

Second. It is claimed that conceding the statute in question to be constitutional the Circuit Court and Court of Appeals erred in construing the term "*contemplated suicide*," as used in the statute to mean "*intended or purposed*," or "*intended or had resolved to commit suicide.*"

Before considering these propositions, we desire to call the attention of the court to the attitude in which plaintiff in error places itself by these proceedings, and deny its right to attack the validity of the statutory provisions which it has subscribed to, and agreed to act in compliance with, as a condition precedent to its doing business within the State. The Aetna Life Insurance Company is a corporation organized in the State of Connecticut, and primarily has citizenship only in that State. When it extends its business to other States it does so only by comity. Other States can exclude it from their boundaries altogether and not infract any rights it possesses under the Constitution of the State of Connecticut or

of the United States. Being the creature of local law, it can have no legal existence beyond the limits of the sovereignty where created. The recognition of its existence even by other States, and the enforcement of its contracts made therein, depend purely upon the courtesy of those States, a courtesy which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Every power which it exercises in another State depends for its validity upon the laws of the sovereignty in which it is exercised; it cannot make a valid contract without their sanction, express or implied.

As was said by this court in *Paul vs. Virginia*, "having no absolute right of recognition in other States, but depending for such recognition and enforcement of its contracts upon their assent, it follows as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. *They may exclude the foreign corporation entirely.* They may restrict its business to particular localities, or they may exact such security for the performance of its contracts with her citizens as in their judgment will best promote the public interest. *The whole matter rests in their discretion.*" It was also held in the same opinion that acts of a State Legislature regulating or even excluding foreign insurance companies are not in conflict with the clause of the Constitution which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

This court has carried this doctrine still further in the case of *Doyle vs. Continental Insurance Company* and held that a State law providing that no insurance company chartered by any other State of the Union, shall transact business within the State until it shall have filed a stipulation not to remove suits brought against it in the State courts into the courts of the United States, and that if any

such company should remove a suit into the United States Courts, in violation of its agreement, its license to do business within the State should be revoked, is not unconstitutional. The court took the position in that case that the State may compel the foreign company to abstain from the Federal Courts, or to cease to do business in the State, and justified its position on the ground that the foreign corporation had "*no constitutional right to do business in that State*," and consequently no right under the laws or the Constitution of the United States by its exclusion from the State is infringed.

If then this corporation is merely a creature of the local law creating it, if it is not a citizen in such a sense as will bring it under the protection of the constitution which provides that the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States, if it has no privileges or "immunities" which the State of Missouri is bound to recognize, and if the State of Missouri may prohibit its doing business—its very existence—within its limits (all of which has been decided by this court in *Paul vs. Virginia* and *Doyle vs. Continental Ins. Co.*) then it must follow that it has a right to impose such regulations upon this and all other foreign corporations as in its judgment the interests of its people demand; and it also follows that plaintiff in error having agreed to comply with such regulations is not now in a position to question their wisdom or attack their validity.

Paul vs. Virginia, 8 Wall., 168.

Ducat vs. Chicago, 10 Wall., 410.

Chicago, etc. Ins. Co. vs. Needles, 113 U. S., 574.

State vs. Phoenix Insurance Co., 92 Tenn., 420.

Bank of Augusta vs. Earle, 13 Peters, 586.

Doyle vs. Continental Ins. Co., 94 U. S., 535.

II.

The main argument advanced by plaintiff in error in support of its petition for this writ is based upon the proposition that the section of the Missouri Statutes involved in this case is unconstitutional and void. Reversing the order adopted in plaintiff's brief we shall discuss this question first and the construction of the section afterwards. This seems to us to be the natural and logical order, since, if the statute is unconstitutional an attempt to construe it would be a waste of energy.

Before examining plaintiff's argument on this point we desire to call the attention of the court to the Act of Congress creating the United States Circuit Court of Appeals, which we submit without comment.

SEC. 5 provides "that appeals or writs of error may be taken from District Courts or from the existing Circuit Courts direct to the Supreme Court in the following cases:

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

* * * * * *

Sec. 6. Provides "that the Circuit Court of Appeals established by this act shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this Act."

26 Stat., L. 826.

Section 5855 of the Revised Statutes of 1889 of the State of Missouri, which is objected to as being unconsti-

tutional reads as follows: "In all suits upon policies of insurance on life heareafter issued by any company doing business in this State it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void."

It is claimed now that this section is in conflict with several constitutional provisions and especially the following:

1. "No person shall be deprived of life, liberty or property without due process of law."

Constitution of Missouri, 1875, Art. II, Sec. 30.

2. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws."

Constitution U. S., Amendment XIV, Sec. 1.

This objection rests upon the theory that the legislature in thus interfering with the rights of insurance companies and of the citizens of the States to make agreements such as are mutually satisfactory, is guilty of impertinently intermedling with private contracts, with which the public has no concern and over which it has no control, and in so doing it has deprived the parties in interest of a valuable property right within the meaning of these constitutional provisions. The right to acquire and possess property of course includes the right to contract. And it is claimed since the legislature has exceeded its powers under the constitution in enacting the section com-

plained of, plaintiff has been deprived of this right of freedom of contract without "due process of law."

In determining the extent to which a legislature should go in the exercise of its police power it is essential to ascertain the nature of the business it undertakes to regulate.

The difficulty if not the impossibility of determining the exact limit to which a State should go in the exercise of this power is apparent. It must be conceded, however, that under the powers inherent in every sovereignty, a State may regulate the conduct of its own citizens toward each other, and when necessary for the public good, the manner in which each shall use his own property. It has, in the exercise of these powers, been customary in England from time immemorial and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, inn-keepers, etc., and in late years private warehouses and grain elevators, and in so doing to fix a maximum charge to be made for services rendered, accommodations furnished, and articles sold. Such checks upon liberty of contract have been sustained by the highest courts. Others involving the application of the same police powers have been long in force in Missouri in many statutes, among which are especially noteworthy the laws fixing the maximum rate of interest for the use of money, giving mechanics liens under certain circumstances, governing the liability of common carriers, forbidding contracts to limit the time for bringing an action, establishing standards of weights and measures, as well as the laws in controversy putting into insurance contracts statutory terms, and nullifying any stipulation in the policy to the contrary.

The doctrine recently enunciated by this court in *Munn vs. Illinois, and Budd vs. New York*,—which must be conceded to be the controling principle in these cases, notwithstanding the able dissenting opinions so freely

quoted from in plaintiffs brief—is that, when the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must, to the extent of such interest, submit to be controlled by the public, for the common good, as long as he maintains the use. The police power must necessarily enlarge its range as business expands and society develops. The proper office of statutes is to remedy the defects, and modify the operation, of the common law rules to meet changed conditions in society and increased volume and improved methods of business.

We come now to inquire whether the business of life insurance is at the present time a proper subject for the exercise of the police power of the State within the principle just mentioned. In examining this question it is important to know something about the magnitude of the business. The report of the insurance commissioner, appointed under the laws of the State, covering the transactions of the year 1894, shows that on December 31st of that year, there were in force in the State of Missouri over two hundred and fifty-three thousand life policies, amounting to the enormous sum of one hundred and sixty-two million of dollars. The losses paid in the same year as shown by the same report, amount to over two million dollars, while the premiums paid by the insured amounted to something over five millions.

Let us next consider the nature of the business. The business of life insurance has attained such a vast growth during the last twenty-five years that it is now a usual and favorite means for making provisions for the wife and children and creditors of the insured. Life insurance companies are in the nature of savings banks in which are invested much of the surplus earnings of the people. It is almost universally the case that those effecting insurance are the heads of families. The beneficiaries

are generally wives and children. The alacrity with which insurance companies issue policies and the reluctance with which they pay them is well known. Prior to the enactment of this regulation if the insured died in a sudden or mysterious manner the defense of suicide was immediately set up. Another universal practice of the companies has been to put a large number of questions to the applicant touching a great variety of matters, some of which were material, but many of which bore remotely if at all on the real risk assumed. A mistake or misrepresentation in the answer to any question, however trifling or immaterial, avoided the policy. The companies taking advantage of the practically helpless condition of the beneficiaries, had but to raise some technicality to defeat the policy, or at least to secure a favorable compromise. In such cases justice delayed was justice denied, hence the courts were powerless to correct the evil. And the statute in question is but an effort on the part of the legislature to suppress this mischief and advance the remedy.

In view of the magnitude and nature of the life insurance business, it is apparent that the public is largely interested in all that relates to it. This fact is universally recognized as is evidenced by the trend of modern legislation with respect to it.

The States of the Union have severally entered upon legislation regulating life insurance. In each an insurance department has been organized. A general supervision has been assumed by the States, and exercised through the insurance department. In our own State this system of legislation began as early as 1869 and it has grown in bulk and importance with the growth of business and the development of the resources of the State. It fixes the minimum of actual capital necessary to the organization of a life insurance company. It provides for a reserve fund for the security of policy holders. It prohibits the distribution of dividends to the injury of the

reserve fund. In fire insurance it regulates the form of policy. It requires each company to submit detailed statements of the business done, of its assets and liabilities, and to show its financial condition and it requires companies organized under the laws of other States or countries to make certain deposits in this State to secure those who are insured by them. It creates what is known as the non-forfeitable policy and provides that immaterial misrepresentations shall not avoid the policy. These regulations have been made from time to time as their importance has been felt by the public.

This right of the State to regulate the business of life insurance has been repeatedly sanctioned by this court and the highest courts of many of the States. They held, as we now contend, that the business of insurance, by reason of its magnitude and by reason of the nature of the security offered and the universality with which it has been sought as an investment, has assumed important public relations, and is therefore a proper subject for the exercise of the police power of the State. It must be borne in mind that if this section is declared unconstitutional on the ground that it is an infraction of property rights, all statutory regulations relating to fire and life insurance companies must fall with it. All, or nearly all, regulations infringe upon this right in a greater or less degree, and if one is adjudged unconstitutional all must go. The tendency in recent years has been to extend rather than to restrict this power, and authorize the State to prescribe all such regulations as in its jndgment will secure, or tend to secure its people, against deception and fraud. And while we agree with the counsel for plaintiff in error that constitutional limitations should be construed strictly, yet we think the changed conditions of society and increased volume and complicated methods of business justify this tendency. While it is true that the genius of our institutions is that society exists for the indi-

vidual, yet it is also true that as soon as any part of the conduct of the individual affects prejudicially the interests of others, society has jurisdiction over it. And the history of our law discloses the fact that our legislatures, both in England and America, have not been slow to exercise this jurisdiction, when in their judgment the safety of the people and the public good demanded it. The Great Charter had not been in existence 100 years before the Statute of *Quia Emptores* (18 Edw., 1) was passed, removing restrictions upon the right of alienation of land, affecting not merely incidental, but vested property rights. This, together with the enactment of the rule against perpetuities (40 Geo., III) and the modifications of the common law doctrine of mortgages by our legislatures and courts of equity, serve to illustrate how readily our courts and legislatures have been to disregard the strict letter of organic law and adopt the doctrine that the welfare of the people is the highest law. These and similar innovations have been introduced in response solely to the demands of public policy. We agree with plaintiff's counsel that this principle of universal freedom is one of the chief characteristics of our law, but in our admiration for it we should not forget the old maxim which is the fundamental principle of all systems of jurisprudence—*sic utere tuo ut alienum non laedas.*

Munn vs. Illinois, 94 U. S., 113.

Budd vs. New York, 143 U. S., 533.

People vs. Budd, 117 N. Y., 1.

Com. vs. Vrooman, 164 Pa., 306.

Dugger, *et al.* vs. Mechanics' & Travelers' Ins. Co. (Tenn.), 28 L. R. A., 796.

Powell vs. Pa., 127 U. S., 684.

III.

We pass now to the consideration of the question of the construction of the statute.

The section of the statute involved in this case is as follows:—

"In all suits upon policies of insurance on life here-
"after issued by any company doing business in this State,
"it shall be no defense that the insured committed suicide
"unless it shall be shown to the satisfaction of the court
"or jury trying the cause, that the insured contemplated
"suicide at the time he made his application for the policy,
"and any stipulation in the policy to the contrary shall be
"void." Sec. 5855, 2 R. S. of Mo., 1889.

The charge of the trial court interpreting this section of the statute is as follows:—

"The fact, if from the evidence you believe it to be a fact, that Alonzo K. Florida committed suicide, constitutes in itself no defense on the part of the Insurance Company under this clause.

In order to make a defense out of such fact you must believe from the preponderance of evidence that Alonzo K. Florida, at the time he made application for either or both policies of life insurance involved in this suit, contemplated suicide: and by contemplated, is meant that there was a complete, well formed purpose of taking his own life; and that purpose culminated by actually killing himself, with a view, and for the purpose of defrauding the defendant company out of the money stipulated in the policies to be paid" (See p. 134 of Printed Record).

The Court of Appeals places the following construction upon it:—

"Upon the whole, therefore, we conclude that the statute should be construed to mean that hereafter it shall be no defense to a suit upon a life insurance policy that

the insured committed suicide, unless it shall be proven to the satisfaction of the court or jury that the insured *intended*, or *had resolved*, to commit suicide at the time when he made application for the policy.

This, as we understand the charge, was the view that was entertained by the trial court and substantially expressed in its instructions, and in thus declaring the law no error was committed."

Mr. Justice Thayer, who wrote the opinion of the court, bases this ruling on the following ground, which, in our judgment, is unanswerable:

"If we adopt the defendant's definition of the word "contemplated" and assume that it was used by the Legislature in that sense, then the inquiry immediately arises, when can a person be said to have so far considered the subject of suicide, or to have so had the thought in mind, as to vitiate a policy of life insurance? In the practical administration of the law, courts will find it difficult to answer this question to the comprehension of a jury, the line must necessarily be drawn somewhere between that amount of thought and contemplation which will and that which will not defeat a policy, because a subject may be considered with different degrees of intensity or attention and it will hardly do to say that any amount of thought on the subject of suicide as a future possibility, at the time of taking out a policy will serve to avoid it if the assured eventually died by his own hand."

The question of construction was the main, and in fact, the only issue presented to the Court of Appeals.

Reducing it to its last analysis, the question simply is: Shall the word "*contemplate*" as used in the statute be given a meaning of such vague and uncertain import; that the exception clause of the provision in which it is used will be given a scope such as will practically abrogate the general rule attempted to be enacted, or shall it be so construed as to render the general rule of the provision a pos-

itive, effectual proposition of law, abolishing the defense of suicide in suits on policies of insurance, except in case of palpable fraud?

If the expression "contemplated suicide" is to be construed, as the defendant contends, to mean any canvassing of the subject of suicide, however vague,—any consideration of the possibility of suicide upon certain contingencies, however uncertain or remote, the exception will practically annihilate the general rule, and the section be rendered a senseless and useless jingle of words. On the other hand, if it is held to mean an *intent*, a sane, deliberate *purpose*, *a design*, the exception clause will furnish adequate relief to the companies in case of fraud, and at the same time give the general rule sought to be established by the Legislature some meaning and effect.

It will be observed that by the provisions of the statute suicide *in itself* is no defense to an action on the policy.

The policy of the act recognizes suicide, in and by itself, as a disease or casualty against which valid insurance can be secured, and so strongly does it adhere to this policy, that it declares any contrary stipulation in the contract of insurance to be void.

A construction, therefore, must now be placed upon the word "contemplated" as used in the statute, such as is in harmony with the above-mentioned policy of the act.

If counsel for plaintiff is correct in his claim, then an intelligent consideration by an applicant for insurance of the possibility of a casualty against which he wants to insure, and against which the law declares he may insure, will avoid his policy.

An applicant for insurance in one sense contemplates the possibility of and desires to insure against accident, fever, consumption, suicide and the entire array of diseases, and casualties, to which, in the course of a long life, he may be subject. Shall such intelligent and necessary

consideration of the very purpose and subject of the proposed contract be held to be a ground of defeating it?

A statute providing in effect that suicide is a disease or casualty against which one may insure, and containing an exception clause which says in substance that the "*having in view*" or "*contemplation*" by the assured, at the time he applied for the insurance, of one of the very things he desires to be insured against, is a ground for defeating the policy, is not only a contradiction of terms, but an absurdity. Yet this is exactly the construction sought to be placed upon the section of the statute in question by the defendant in this case.

At common law a policy of insurance could not be resisted on the ground of suicide unless it was clearly shown that the transaction was a fraud upon the company, and in order to establish fraud there must have been a fraudulent intent. In a recent New York case (Smith vs. National Benefit Society, 123 N. Y., 85) the court held that the "transaction, the thing done, the fact put in issue, was the FRAUD, which evidently was not a simple but a compound and continuous fact, proceeding to its results by consecutive steps and separate acts, having necessarily an origin, a progress and an ultimate result, involving not only the *intent* of the assured, but also his *sanity* without which the *responsible intent* could not exist."

* * * * * *

"Some of this evidence was resisted upon the ground that death by suicide was no defense under the terms of the policy. That is true; but the defense was *fraud*, and suicide the ultimate agency by which the fraud was accomplished. It was necessary, therefore *to prove it*, and in such manner as to indicate that it was *not an insane or sudden impulse, but the culmination and effective working out of a deliberately conceived purpose of fraud.*"

Can it be said that the purpose of the legislature in enacting the provision in question was to place the insur-